



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenant confirmed service of the both the application and amended application for dispute resolution, including the notice of hearing and evidence on file.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on December 1, 2018 with a monthly rent of \$875.00 payable on the 1st day of each month. As of December 1, 2019, the rent increased to \$895.00. The

tenant paid a security deposit of \$437.50 and a pet deposit of \$300.00 at the start of the tenancy which the landlord continues to hold.

The landlord submitted a copy of a 10 Day Notice dated November 9, 2019. The 10 Day Notice indicates an outstanding rent amount of \$875.00 which was due on November 1, 2019. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice.

The building manager M.P. testified that on November 9, 2019 she served the tenant with the 10 Day Notice by posting a copy to the door of the rental premises.

The property manager C.M. testified the outstanding rent was not paid within 5 days and no rent has been paid since.

The landlord's amended monetary claim is for outstanding rent in the amount of \$3310.00 which included rent and/or loss of rent until the end of February 2020.

The tenant acknowledged service of the 10 Day Notice and that he did not pay the full amount of the rent arrears indicated, within five days, of receiving the Notice.

The tenant agreed to the amount of outstanding rent as claimed by the landlord.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

I am satisfied that the tenant was served with the 10 Day Notice on November 9, 2019. The tenant would have had until November 14, 2019 to pay the outstanding amount as per the 10 Day Notice which he failed to do.

I find that the 10 Day Notice complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord's claim for outstanding rent and or loss of rent of \$3310.00 up until the end of February 2020.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$3410.00.

The landlord continues to hold a security deposit and pet deposit in total of \$737.50. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act. Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$2672.50.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2672.50. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 21, 2020

Residential Tenancy Branch