



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX of NANAIMO PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

On January 8, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession; for a monetary order for unpaid rent or utilities; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord's agents (“the Landlord”) attended the teleconference hearing; however, the Tenant did not. The Landlord provided affirmed testimony that the Tenant was served the Notice of Dispute Resolution Proceeding by registered mail sent on January 17, 2020. The Landlord testified that the notice was sent to the Tenant addressed to the dispute address and the Tenant failed to pick up the registered mail. The Landlord provided the registered mail receipt number as proof of service.

I find that the Tenant has been duly served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the *Act*.

The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on May 1, 2012 and is on a month to month basis. Rent in the amount of \$880.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$337.50. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant did not pay the rent of \$880.00 owing under the tenancy agreement for the month of December 2019.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 4, 2019, ("the 10 Day Notice").

The Landlord testified that the Tenant was served with the Notice by posting it to the Tenant's door on December 4, 2019 at 11:14 am.

The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$880.00 which was due on December 1, 2019. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

There is no evidence before me that the Tenant made an application to dispute the 10 Day Notice.

The Landlord testified that the Tenant owes rent for the following months:

- December 2019, in the amount of \$880.00
- January 2020, in the amount of \$880.00
- February 2020 in the amount of \$880.00
- March 2020 in the amount of \$880.00

The Landlord seeks an order of possession of the rental unit and a monetary order for unpaid rent in the amount of \$3,520.00.

The Landlord requested to amend the claim to include a claim for unpaid rent for the months of February 2020 and March 2020. The Landlord testified that the Tenant is still living in the rental unit and has not paid rent for four months.

The Landlord requested to amend the application to include a request to keep the security deposit of \$337.50 in partial satisfaction of the claim for unpaid rent.

Analysis

Section 46 (2) of the Act provides that a notice under this section must comply with section 52 [form and content of notice to end tenancy].

Section 52 of the Act provides that in order to be effective, a notice to end a tenancy given by a Landlord must be in the approved form and must be signed and dated by the Landlord giving the notice.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant did not pay the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice, and did not apply to dispute the Notice.

Upon review of the 10 Day Notice, I find that the 10 Day Notice is not signed by the Landlord.

I find that the 10 Day Notice does not comply with the requirements of section 52 of the Act. Therefore, while I find that the Tenant did not dispute the 10 Day Notice, I am unable to grant the Landlord an order of possession for the rental unit.

I find that I am able to proceed with the Landlords' monetary claim for unpaid rent.

I find that the Tenant owes the Landlord \$880.00 for rent each month. I accept the Landlords' testimony that the Tenant has failed to pay the rent for the months of December 2019 and January 2020.

I find it is reasonable to allow the Landlord to amend the monetary claim for unpaid rent for an additional two months of rent. The Tenant is aware that he is required under the tenancy agreement to pay rent each month and the Tenant is still living in the rental unit. I amend the Landlords' application to include a claim for unpaid rent for the months of February 2020 and March 2020.

I also find it is reasonable to permit the Landlord to amend the application to include a claim to keep the security deposit of \$337.50 towards unpaid rent.

I find that the Tenant owes the Landlord rent in the amount of \$3,520.00 for the above-mentioned months. I authorize the Landlord to keep the security deposit of \$337.50 in partial satisfaction of the unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$3,620.00 comprised of \$3,520.00 in unpaid rent for the above-mentioned months and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$337.50, I find that the Landlord is entitled to a monetary order in the amount of \$3,282.50. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement and did not file to dispute the 10 Day Notice. While the Tenant did not dispute the 10 Day Notice; I am unable to grant the Landlord an order of possession for the rental unit because the Notice is not signed by the Landlord.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 4, 2019 is set aside.

I find that the Tenant owes the Landlord rent in the amount of \$3,520.00.

I order that the Landlord can keep the security deposit in the amount of \$337.50 in partial satisfaction of the monetary award.

I grant the Landlord a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$3,282.50.

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: March 12, 2020

Residential Tenancy Branch