



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*;
- a monetary order for unpaid rent, pursuant to sections 26 and 67 of the *Act*; and
- authorization to recover the filing fee for this application pursuant to section 72.

Although I left the connection open until 2:12 P.M. to enable the tenant to call into this teleconference scheduled for 1:30 P.M., the tenant did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Preliminary Issue – Service of the Notice of Hearing and Evidence

I accept the landlord's testimony that on February 07, 2020 she left a copy of the notice of hearing and evidence (the "application for dispute resolution") at the tenant's residence with an adult, NA, who resided with the tenant up until February 10, 2020. The landlord testified that on February 10, 2020 she witnessed the tenant receiving the application for dispute resolution from NA, in front of a police officer.

I find the tenant was properly served in accordance with section 89(2)d of the *Act* regarding the application for an order of possession.

As the tenant was not served in accordance with section 89(1) of the Act regarding the application for a monetary order for unpaid rent, I dismiss this part of the application with leave to reapply.

Issues to be Decided

Is the landlord entitled to:

- an Order of Possession for non-payment of rent?
- authorization to recover the filing fee for this application from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

The landlord testified the tenancy started on October 01, 2018 and a written tenancy agreement was signed on January 09, 2019 and entered into evidence. Monthly rent is \$825.00. Originally rent payment was to be due on the first, but the landlord agreed to the request of the tenant and changed the due date to the 15th day. The landlord still holds a \$300.00 security deposit collected at the outset of the tenancy. The tenant continues to reside at the rental unit and is in arrears. A copy of the signed written tenancy agreement was provided.

The landlord affirmed the tenancy agreement was printed without the names of the landlord and the tenant.

The landlord submitted a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), dated January 11, 2020, for \$6,600.00 in unpaid rent. The effective date is January 29, 2020. The Notice was served by posting it to the tenant's door on January 15, 2020.

The landlord affirmed the tenant has not submitted any rent payment since June 2019. Thus, the arrears of \$6,600.00 mentioned in the Notice are equivalent to eight months of unpaid rent.

A Direct Request Worksheet (RTB form 46) was provided. A Proof of Service of Notice to End Tenancy form (RTB-34) and a Proof of Service of Notice of Direct Request Proceeding form (RTB-44) were submitted into evidence.

Analysis

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I accept the landlord uncontested evidence that the tenant has been in arrears for \$6,600.00 for unpaid rent from June 2019 to January 2020.

The Notice is dated January 11, 2020 and was posted to the tenant's door on January 15, 2020. I find the tenant was deemed served with the Notice on January 18, 2020, three days after it was posted to the tenant's door, in accordance with section 88(g) and 90 (c) of the Act.

The Notice indicates the value of arrears since June 2019 and the effective date of the Notice is January 29, 2020. The form and content of the Notice is valid pursuant to section 52 of the Act. The tenant has not disputed the Notice and is conclusively presumed under sections 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, January 29, 2020.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain \$100.00 of the security deposit to recover the filing fee.

I warn the tenant that she may be liable for any costs the landlord incur to enforce the order of possession.

Conclusion

I dismiss with leave to reapply the request for a monetary order for unpaid rent.

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

I order the landlord to retain \$100.00 of the security deposit and address the remaining security deposit balance in accordance with section 38 of the Act.

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 30, 2020

Residential Tenancy Branch