



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request (the “Application”) that was adjourned to a participatory hearing. The Application was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking:

- An Order of Possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”);
- Recovery of unpaid rent;
- Recovery of the filing fee; and
- Authorization to withhold the security deposit against money owed.

The hearing was convened by telephone conference call and was attended by the Landlord’s agent (the “Agent”), who provided affirmed testimony. No one appeared on behalf of the Tenant. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As no one appeared on behalf of the Tenant, I confirmed service of these documents as explained below.

The Agent testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and notice of the participatory hearing, as well as the Landlord’s documentary evidence, was sent to the Tenant by registered mail on March 28, 2020, at the rental unit. The Agent provided me with the registered mail tracking number and a copy of the registered mail receipt and stub. The Canada Post website confirms that the registered mail was sent as described above and received on March 31, 2020. As a result, I find that the Tenant was served the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and notice of the participatory hearing, as well as the Landlord’s documentary evidence, in accordance with the *Act* and the Rules of Procedure on March 31, 2020.

Further to the above, the Agent stated that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and notice of the participatory hearing, as well as the Landlord's documentary evidence, plus a copy of the registered mail information, was emailed to the Tenant on March 30, 2020.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address provided in the Application.

Preliminary Matters

The Agent stated that since the Application was filed, the Tenant has paid no rent and now owes additional rent and late fees.

Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

As a result, I amended the Application to increase the Landlord's monetary claim for outstanding rent and late fees to \$4,560.00, the amount the Agent stated is currently outstanding.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession based on an undisputed 10 Day Notice?

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord authorized to withhold the security deposit against any money owed?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on January 27, 2014, states that the fixed-term of the tenancy agreement began on February 15, 2014, and ended on February 28, 2015, that rent in the amount of \$825.00 was due at the start of the tenancy, and that rent is due on the first day of the month. Although the tenancy agreement states that both a security and a pet damage deposit were to be paid, the Agent stated that only a \$412.50 security deposit was paid, which the Landlord still holds. The Agent stated that an Addendum to the tenancy agreement signed on February 14, 2014, allows for the collection of a \$25.00 late fee for the late payment of rent and provided a copy of the Addendum for my review. The Agent also stated that rent is currently \$889.00.

The Agent stated that when the Tenant did not pay rent as required, a 10 Day Notice was personally served by them on the Tenant on February 19, 2020. The 10 Day Notice in the documentary evidence before me is signed by the Agent and dated February 19, 2020, has an effective date of March 5, 2020, and states that as of February 1, 2020, the Tenant owed \$1,828.00 in outstanding rent.

The Agent stated that to their knowledge, the Tenant has not filed an application seeking to dispute the 10 Day Notice with the Residential Tenancy Branch (the "Branch") and that the Tenant has not paid any money towards the outstanding rent or late fees owed. The Agent stated that the Tenant currently owes \$4,445.00 in outstanding rent and \$125.00 in late fees (5 x \$25/month).

The Agent sought an Order of Possession as soon as possible as the Tenant is now 5 months behind on rent, as well as authorization to withhold the \$412.50 security deposit towards the Tenant's outstanding rent.

No one appeared on behalf of the Tenant to provide evidence or testimony for my consideration.

Analysis

Section 26 (1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. As there is no evidence before me that the Tenant was entitled under the *Act* to deduct any amount of rent, I therefore find that the Tenant was obligated to

pay rent in full, on the first day of each month, in accordance with the tenancy agreement. As there is no evidence to the contrary, I accept the Agent's testimony that rent is currently \$889.00.

I accept the Agent's undisputed and affirmed testimony that as of February 19, 2020, the Tenant owed \$1,828.00 in outstanding rent and late fees, and that the 10 Day Notice was personally served on the Tenant on February 19, 2020. Section 46 (4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

I accept the Agent's undisputed and affirmed testimony that no attempts have been made by the Tenant to pay any rent or late fees since the 10 Day Notice was served, and that the Tenant currently owes \$4,560.00 in outstanding rent and late fees. Based on the above, and as there is no evidence before me that the Tenant filed an application for dispute resolution with the Branch seeking to dispute the 10 Day Notice, I therefore find that the Tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice, March 5, 2020, and was required to vacate the rental unit on that date pursuant to section 46 (5) of the *Act*.

I also find that the Landlord was entitled to charge a late fee of \$25.00 per month in accordance with section 7 (1) (d) and 7 (2) of the regulations, and section 3 of the Addendum.

Based on the above, I find that the Tenant owes \$4,560.00 in outstanding rent and late fees and that the Landlord is entitled to retain the \$412.50 security deposit towards this amount.

As I find that the 10 Day Notice complies with section 52 of the *Act*, and the effective date of the 10 Day Notice has passed, the Landlord is therefore entitled to an Order of Possession for the rental unit, effective two (2) days after service on the Tenant.

As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. As a result, the Landlord is entitled to a Monetary Order in the amount of \$4,247.50; \$4,560.00 in outstanding rent and late fees, plus \$100.00 for recovery of the filing fee, less the \$412.50 security deposit retained by the Landlord.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$4,247.50**. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. 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: May 19, 2020

Residential Tenancy Branch