



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANTANA HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

On May 1, 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; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord’s agent (“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 using registered mail sent on May 6, 2020. The Landlord testified that the Tenant was also served with notice of the hearing using email sent on May 6, 2020. The Landlord provided a copy of the registered mail tracking number and a copy of the email that was sent to the Tenant. The Landlord testified that the Canada Post website indicates the mail was delivered on May 7, 2020.

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 his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 keep the security deposit towards 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 November 15, 2018 as a fixed term tenancy to continue until November 30, 2019. The tenancy has continued thereafter on a month to month basis. Rent in the amount of \$1,600.00 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 \$800.00 and a pet damage deposit in the amount of \$500.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant failed to pay the rent owing under the tenancy agreement for the months of February 2020, and March 2020.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 1, 2020, ("the 10 Day Notice"). The 10 Day Notice indicates the Tenant has failed to pay \$3,200.00 due on March 1, 2020.

The Landlord testified that the 10 Day Notice was posted to the Tenant's door on March 1, 2020.

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:

- February 2020, in the amount of \$1,600.00
- March 2020, in the amount of \$1,600.00
- April 2020, in the amount of \$1,600.00
- May 2020 in the amount of \$1,600.00
- June 2020 in the amount of \$1,600.00

The Landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$8,000.00. The Landlord testified that the Tenant is still living in the rental unit.

The Landlord is seeking to keep the security deposit and pet damage deposit in partial satisfaction of the claim for unpaid rent.

Analysis

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 and listed in the 10 Day Notice within five days of receiving the Notice, and did not apply to dispute the Notice, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I have reviewed the tenancy agreement and find that the Tenant owes \$1,600.00 each month for rent. I find that the Tenant did not pay the rent owing under the tenancy agreement and is still living in the rental unit. I find that the Tenant owes the Landlord \$8,000.00 for unpaid rent for the above listed months.

I order that the Landlord can keep the security deposit in the amount of \$800.00 and the pet damage deposit in the amount of \$500.00 in partial satisfaction of the award for 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 \$8,100.00 comprised of \$8,000.00 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 and pet damage deposit of \$1,300.00 against the award of \$8,100.00, I find that the Landlord is entitled to a monetary order in the amount of \$6,800.00. 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. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date on the Notice.

The Tenant owes the Landlord \$8,000.00 in unpaid rent.

I order that the Landlord can keep the security deposit of \$800.00 and the pet damage deposit of \$500.00 in partial satisfaction of the claim.

The Landlord is granted an order of possession under section 55 of the Act effective two (2) days after service on the Tenant and I grant a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$6,800.00.

I note that on March 30, 2020 the Minister of Public Safety and Solicitor General declared a state of emergency because of the COVID -19 pandemic. The Ministerial Order provides that a Landlord must not file an order of possession in the Supreme Court of British Columbia unless the order of possession was granted under section 56 or 56.1 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: June 08, 2020

Residential Tenancy Branch