



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, FFL

Introduction

In this dispute, the landlord seeks an order of possession pursuant to sections 46 and 55 of the *Residential Tenancy Act* (the "Act"). In addition, the landlord seeks recovery of the filing fee under section 72 of the Act.

The landlord filed an application for dispute resolution on July 31, 2020 and a dispute resolution hearing was held on September 8, 2020. The landlord's agent (the landlord is a numbered company) attended the hearing and was given a full opportunity to be heard, present testimony, make submissions, and call witnesses. The tenant did not attend.

The landlord's agent (the "landlord") testified that he served the tenant the Notice of Dispute Resolution Proceeding package by way of Canada Post registered mail. A copy of the registered mail tracking information was available. Based on the undisputed evidence of the landlord I find that the tenant was served in compliance with section 89 of the Act.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

By of background, the tenancy started on May 1, 2019 and monthly rent is \$1,900.00. Rent is due on the first day of the month. The tenant paid a security deposit of \$950.00, which the landlord currently holds in trust pending the outcome of this application. There was no written tenancy agreement submitted into evidence.

On July 8, 2020 the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on the tenant. Service was executed by the Notice being posted to the door of the rental unit. The landlord submitted into evidence a photograph of the Notice's being attached to the door of the rental unit. I note that the address of the rental unit is clearly visible to the right of the door.

The Notice indicates that rent arrears in the amount of \$5700.00 was owing and due on March 1, 2020. Unless paid or otherwise disputed the tenant was to vacate by July 18, 2020. They did neither. A copy of the Notice was submitted into evidence. Also submitted into evidence were copies of WhatsApp text conversations. There is no evidence that the tenant made an application for dispute resolution disputing the Notice.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 46(1) of the Act states that a landlord

may end a tenancy if rent is unpaid on any day after it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

In this dispute, the landlord gave the Notice on July 8, 2020 for rent that was due on March 1, 2020.

Section 55(2)(b) of the Act states that

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution: [. . .]

a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired

In addition, section 55(4) of the Act states that

In the circumstances described in subsection (2)(b), the director may, without any further dispute resolution process under Part 5 [*Resolving Disputes*],

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, the landlord gave the Notice, the tenant did not dispute the Notice by making an application for dispute resolution, and the time for making that application has now expired. As such, pursuant to section 55(4)(a) of the Act, I grant the landlord an order of possession. This order of possession is effective two days after service upon the tenant.

In addition, pursuant to section 55(4)(b) of the Act I grant the landlord a monetary award in the amount of \$5,700.00. It should be noted that this amount of rent arrears was due before the provincial state of emergency.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the applicant landlord was successful, I grant their claim for reimbursement of the \$100.00 filing fee.

In summary, then, the landlord is awarded \$5,800.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As the tenancy ended on July 18, 2020, I order that the landlord may retain the tenant’s security deposit of \$950.00 in partial satisfaction of the above-noted award. The balance of the award, \$4,850.00, is issued by way of a monetary order.

Both the monetary order and the order of possession are issued in conjunction with this decision.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlord a monetary order in the amount of \$4,850.00, which must be served on the tenant. Should the tenant fail to pay the landlord the amount owed, the landlord may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: September 8, 2020

Residential Tenancy Branch