



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPE, MNRL, FFL

Introduction

The landlord seeks an order of possession under section 55(2)(b) and a monetary order under sections 67 and 72 of the *Residential Tenancy Act* ("Act").

The landlord filed an application for dispute resolution on September 24, 2020 and a hearing was held on November 23, 2020. The landlord's two agents (hereafter the "landlord") attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses; the tenant did not attend.

The landlord testified that they served the tenant with the Notice of Dispute Resolution Proceeding package by way of Canada Post registered mail (and which was, according to the Canada Post tracking website, delivered) and by way of in-person service on September 29, 2020.

Based on this undisputed oral and documentary evidence I find that the tenant was served in accordance with the Act and the *Rules of Procedure*.

Issues

1. Is the landlord entitled to an order of possession under section 55(2)(b) of the Act?
2. Is the landlord entitled to a monetary order for unpaid rent under section 67 of the Act?
3. Is the landlord entitled to a monetary order for recovery of the filing fee under section 72 of the Act?

Background and Evidence

I only review and consider oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which is relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy began on January 14, 2019, and it was tenancy based on the tenant being employed by the landlord as a building manager. A copy of the employer-landlord's employment offer letter dated January 8, 2019 was submitted into evidence. In exchange for providing building manager services the tenant was given a rental unit at a reduced rent of \$50.00. It should be noted that there was no security or pet damage deposit required. Further, the letter states that "Your residency provided by the Employer is contingent on you remaining in the residential building manager position."

On December 30, 2019, the tenant's employment was terminated by the employer-landlord. A copy of the termination letter was submitted into evidence. In the letter it is indicated that the tenant (and now former employee) would be permitted to stay in the rental unit January 31, 2020. However, the tenant remained in the rental unit well past this date and has not paid even the reduced rent of \$50.00 since. The landlord testified that as of today's date the tenant's arrears are \$500.00 and the tenant is still there.

On September 8, 2020, the landlord served the tenant with a One Month Notice to End Tenancy for End of Employment (a copy of which was submitted into evidence). The notice was completed in full and indicated that the tenant had ten days to dispute the notice. To the landlord's knowledge the tenant has not disputed the notice, and there is nothing on the file to indicate that the tenant disputed 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.

1. Application for an Order of Possession

The notice to end the tenancy was issued under section 48 of the Act. Such a notice must comply with section 52 (form and content) of the Act and having reviewed the notice I find that it complies with section 52 of the Act.

Based on the undisputed oral and documentary evidence I find that the tenant was served with the notice on September 8, 2020 at 3:38 PM.

Section 48(5) of the Act states that a tenant “may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.” Here, the tenant had until September 18, 2020 to file an application for dispute resolution. She did not.

Section 48(6) of the Act states that

If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Having found that the tenant received the notice and is conclusively presumed to have accepted that the tenancy ended on October 31, 2020 (which is the effective date indicated on the notice), I must turn now to section 55(2) of the Act which 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 [:] 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

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an order of possession under section 55(2)(b) of the Act. An order of possession is issued in conjunction with this Decision to the landlord.

2. Claim for Unpaid Rent

Regarding the claim for unpaid rent, section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The landlord testified that the tenant has not paid rent for the past ten months, even though the rent is but a mere \$50.00. There is no evidence before me giving rise to any likelihood that the tenant had, or has, any right under the Act to not pay the rent.

Thus, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving its claim for compensation in the amount of \$500.00 for unpaid rent.

3. Claim for Recovery of Application Filing Fee.

Finally, section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recovery of the filing fee. As the applicant was successful, I grant their claim for reimbursement of the \$100.00 filing fee. Therefore, a monetary order in the total amount of \$600.00 is issued in conjunction with this Decision.

Conclusion

I 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 grant the landlord a monetary order in the amount of \$600.00, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may enforce the order in the Provincial Court of British Columbia (Small Claims Division).

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

Dated: November 23, 2020

Residential Tenancy Branch