



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR-DR MNR-DR FFL

Introduction

The landlord seeks an order of possession and a monetary order pursuant to sections 26, 55, and 67 of the *Residential Tenancy Act* ("Act"). In addition, the landlord seeks to recover the cost of the filing fee pursuant to section 72 of the Act.

The landlord initially applied for possession and monetary orders by direct request on May 29, 2021. An adjudicator adjourned the application to a participatory hearing. A hearing was held before me on October 4, 2021 at 1:30 PM. The landlord, but not the tenant, attended the hearing, which ended at 1:40 PM.

I am satisfied based on evidence provided, including a Canada Post registered mail receipt, and tracking number, that the tenant was served with the Notice of Dispute Resolution Proceeding in compliance with Act and the *Rules of Procedure*.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order?
3. Is the landlord entitled to recover the cost of the application filing fee?

Background and Evidence

The tenancy began on August 28, 2017 and monthly rent is due on the eighth day of the month in the amount of \$2,800.00. The tenant paid a security deposit of \$1,400.00 which the landlord holds in trust. In evidence was a copy of the tenancy agreement.

The landlord gave evidence that he served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on the tenant by leaving the Notice in the mailbox or slot on May 18,

2021. A copy of this Notice was provided into evidence. The landlord testified that, to his knowledge, the tenant never disputed the Notice.

The landlord also gave evidence that the tenant owes rent arrears, as of October 4, 2021, in the amount of \$16,300.00. A Monetary Order Worksheet (updated earlier in the dispute resolution process) was provided.

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.

Order of Possession

Section 26 of the Act requires that a tenant 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. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if they paid rent within five days of service. The Notice also explained that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord testified that the tenant did not dispute the Notice and did not pay the rent. Indeed, the tenant has not paid a substantial amount of rent.

As the tenant did not dispute the Notice, they are conclusively presumed to have accepted that the tenancy would end on the effective date indicated on the Notice, which was May 18, 2021 (see section 46(5) of the Act).

Pursuant to section 55(2)(c) of the Act, a landlord may request an order of possession when 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. Based on the undisputed evidence before me, I find that the landlord is entitled to an order of possession of the rental unit.

An order of possession is thus issued in conjunction with this decision, to the landlord. The landlord must serve a copy of the order of possession on the tenant.

Monetary Order

The tenant owes the landlord \$16,300.00 in rent. Rent was, and is, to be paid according to the tenancy agreement and pursuant to section 26 of the Act. The undisputed evidence before me leads me to conclude, on a balance of probabilities, that the tenant has not paid the above-noted rent as required by law.

Pursuant to section 67 of the Act, it is my finding that the landlord is entitled to a monetary order.

Filing Fee

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in his application, I grant him \$100.00 in compensation to cover the cost of the filing fee. In total, the landlord is awarded \$16,400.00.

Security Deposit Retention and Balance of Award

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, given that the tenancy has now ended, I authorized the landlord to retain the tenant’s security deposit of \$1,400.00 in partial satisfaction of the above-noted award.

The balance of the award is granted by way of a monetary order in the amount of \$15,000.00. A copy of this monetary order is issued in conjunction with this decision, to the landlord. It is the landlord’s responsibility to serve a copy of this order on the tenant.

Conclusion

The application for an order of possession and for a monetary order is granted.

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

The landlord is hereby granted a monetary order in the amount of \$15,000.00, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

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

Dated: October 4, 2021

Residential Tenancy Branch