



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR MNSD FF CNR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46;
- authorization to recover the filing fee for this application pursuant to section 72; and
- various other remedies under the Act.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord testified that on April 21, 2017, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The landlord provided a registered mail tracking number in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing

pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

As the tenant failed to attend the hearing, the tenant's application is dismissed in its entirety without leave to reapply.

Issues

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The tenancy began on August 1, 2016 with a monthly rent of \$1575.00 payable on the 1st day of each month. The tenant paid a security deposit of \$787.50 at the start of the tenancy which the landlord continues to hold.

The landlord testified the tenant failed to pay the \$1575.00 rent payable on April 1, 2017 and on May 1, 2017. The landlord testified that on April 7, 2017 he served the tenant with the 10 Day Notice by sending a copy to the tenant by registered mail. A Registered mail receipt and tracking number was provided with the application.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated on the 10 Day Notice within five days of service of the Notice and no rent has been paid by the tenant since.

The tenant acknowledged service of the 10 Day Notice as he filed an application to dispute the Notice on April 11, 2017.

The landlord's monetary claim is for outstanding rent in the amount of \$3150.00. The landlord testified that this includes unpaid rent for the months of April and May 2017.

Analysis

I am satisfied that the tenant received the 10 Day Notice by at least April 11, 2017, the date on which he filed an application to dispute the Notice.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

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 this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants application must be dismissed as the tenant did not attend the hearing to present any evidence in dispute of the Notice.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act.

I find that the Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

I find that the tenant was obligated to pay monthly rent in the amount of \$1575.00 but failed to pay rent as per the landlord's undisputed testimony. I accept the landlord's claim for outstanding rent of \$3150.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$3250.00.

The landlord continues to hold a security deposit of \$787.50. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$2462.50.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order; this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2462.50. 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 16, 2017

Residential Tenancy Branch