



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAMY PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38
4. An Order to recover the filing fee for this application - Section 72.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing. The landlord provided proof of mail registration sent May 24, 2017 which went unclaimed by the tenant and consequently returned to the landlord. The landlord testified they provided the tenant with all of the evidence submitted to this proceeding.

The landlord was given opportunity to be heard, to present evidence and to make submissions. The landlord preliminarily orally amended their claim seeking solely an Order of Possession and the filing fee.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed testimony and ancillary document evidence of the landlord is as follows. The tenancy began in May 2012. Rent in the amount of \$1348.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$637.50. The tenant failed to pay all rent in the month of May 2017 and on May 12, 2017 the landlord served the tenant with a Notice to End tenancy for non-payment of rent (the Notice) by posting the Notice on the tenant's door. The tenant ultimately paid the outstanding arrears in rent by "bank draft" received by the landlord on May 27, 2017, which the landlord provided was after 10 days following the deemed received date of the Notice.

The landlord further sought an end to the tenancy based on a 1 Month Notice to End for Cause served on the tenant in January 2017 and undisputed by them.

The landlord testified they have accepted rent to the end of July 2017.

Analysis

Based on the landlord's undisputed evidence I find that the tenant was served with a notice to end tenancy for non-payment of rent by posting the Notice on the tenant's door on May 12, 2017. I find the notice to be valid. I find the tenant was deemed by Section 90 of the Act to have received the Notice to End on the third day after the Notice was posted: May 15, 2017. The tenant had 5 days from the latter date to pay the outstanding rent or file for dispute resolution. The tenant did neither, therefore, in accordance with Section 55 of the Act the tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of the notice despite the tenant ultimately satisfying the outstanding rent after the effective date of the Notice.

Based on the above I find that the landlord is entitled to an Order of Possession.

Having determined the state of the tenancy based on the Notice to End for unpaid rent I decline to consider the landlord's 1 Month Notice to End for Cause.

I find that the landlord has established entitlement to recovery of the \$100.00 filing fee.

Conclusion

I grant an Order of Possession to the landlord effective July 31, 2017. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I Order that the landlord may retain \$100.00 from the tenant's security deposit in satisfaction of the filing fee in this matter.

The landlord's application in relevant part is granted.

This Decision is final and binding.

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: July 10, 2017

Residential Tenancy Branch