



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPN, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord and the Tenant, both of whom provided affirmed testimony. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address provided in the hearing. At the request of the Tenant, copies of the decision will be mailed to them at the rental unit.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the Landlord entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

No written tenancy agreement was before me for consideration and although the parties could not agree on the exact date upon which the tenancy began, ultimately they agreed that a month-to-month tenancy is in place, that a \$750.00 security deposit was paid, which the Landlord still holds, and that rent in the amount of \$1,500.00 is due each

month. While both parties agreed that rent was initially due on the first day of each month under the tenancy agreement, they disagreed about the day upon which rent is currently due. The Tenant testified that in February of 2018 it was agreed that rent would now be due on the 20th day of each month instead of the 1st. The Landlord acknowledged that a conversation occurred whereby the Tenant agreed to pay rent in advance of the 1st as they were having difficulty paying on time but stated that there was never an agreement that this changed the terms of the tenancy agreement or the date upon which rent is due.

The Landlord testified that the Tenant did not pay the \$1,500.00 in rent as required on April 1, 2018, and that despite repeated arrangements to make this payment, no rent was received. As a result, the Landlord stated that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was subsequently served on the Tenant in person on April 24, 2018.

The 10 Day Notice in the documentary evidence before me, dated April 24, 2018, indicates that the Tenant failed to pay \$1,500.00 in rent that was due on April 1, 2018. The 10 Day Notice has an effective vacancy date of May 5, 2018, and indicates that it was personally served on the Tenant on April 24, 2018. In the hearing the Tenant acknowledged receipt of the 10 Day Notice on April 24, 2018. The 10 Day Notice also states that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

The Tenant argued that only \$300.00 in rent was due for April 2018, as there is an agreement in place for the Tenant to deduct money owed to their partner, who is also an occupant of the rental unit, for work done on the property. Further to this, the Tenant stated that April's rent was not due until April 20, 2018. Although the Landlord agreed that the Tenant's partner sometimes does work on the property for compensation, the Landlord denied that there has ever been an agreement to deduct money from the rent for this purpose as the wages owed for work done on the property are unrelated to the payment of rent. The Landlord also denied that April's rent was not due until April 20, 2018. In contrast to the Tenant's testimony, the Landlord stated that rent was still due on the first day of each month as per the tenancy agreement but that the Tenant had agreed to pay rent in advance due to consistent issues with late payment of rent. As a result, the Landlord stated that rent should have been paid by the Tenant by her own agreement to pay early on March 20, 2018.

In any event, both parties agreed that no rent was paid by the Tenant in relation to the 10 Day Notice until the end of May when \$1,500.00 was paid. The parties also agreed

that an additional \$2,500.00 was paid last week. Despite the above noted rent payments, the parties agreed that an additional \$1,000.00 remains outstanding I rent.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day 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.

However, section 46(4) and 46(5) of the *Act* also state:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), 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 to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was personally served with the 10 Day Notice on April 24, 2018, the date they acknowledged receipt.

Although the parties could not agree on whether rent for April was due on April 1, 2018, or April 20, 2018, as the 10 Day Notice was not served until April 24, 2018, I find that in either case, rent would have been due prior to the service of the 10 Day Notice.

Although the parties also disagreed about whether \$300.00 or \$1,500.00 was owed by the Tenant for April rent at the time the 10 Day Notice was served, ultimately the Tenant

agreed that at least \$300.00 was owed to the Landlord on the date the 10 Day Notice was served and that no money was paid to the Landlord within five days of receiving the 10 Day Notice. Further to this, the Tenant acknowledged that no Application was filed with the Residential Tenancy Branch (the "Branch") seeking cancellation of the 10 Day Notice.

As the Landlord has not made an Application seeking outstanding rent, I find that the exact amount of rent outstanding is not the matter I must determine. Based on the testimony provided by the parties in the hearing I am satisfied that the Tenant owed at least \$300.00 in outstanding rent at the time the 10 Day Notice was served. As the Tenant acknowledged that they made no rent payments within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, May 5, 2018.

Based on the above, the Landlord is therefore entitled to an Order of Possession. As the effective date of the 10 Day Notice has passed and both parties agreed that at least some amount of rent is still outstanding, the Order of Possession will be effective two days after service on the Tenant.

As the Landlord was successful in their Application, I also find that the Landlord is entitled to retain from the \$750.00 security deposit paid by the Tenant, \$100.00 for the recovery of the filing fee pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Dated: July 5, 2018

Residential Tenancy Branch