



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNRL-S, OPR, FFL

Tenant: CNR, MT

Introduction and Preliminary Matters

On September 24, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and to recover the cost of the filing fee.

On September 28, 2018, the Tenant submitted an Application for Dispute Resolution under the Act. The Tenant requested an order to cancel a 10-Day Notice to End Tenancy for Unpaid Rent, dated September 10, 2018 (the “Notice”), and to request more time to dispute the Notice. The Tenant’s Application was crossed with the Landlord’s Application and the matter was set for a participatory hearing via conference call.

The Landlord attended the conference call hearing; however, the Tenant did not attend at any time during the 21-minute hearing. The Landlord testified that they served the Tenant with the Notice of Hearing by sending it via registered mail on September 28, 2018. The Landlord stated, according to the Canada Post website, that a notice card was left on the Tenant’s door on October 2, 2018; however, that the package was never picked up by the Tenant. The Landlord also said that he has not received any evidence or Notice of Hearing packages from the Tenant.

Both parties’ Applications were crossed. I note that the Tenant was emailed a copy of the Notice of Hearing from the Residential Tenancy Branch on October 1, 2018. I find that the Tenant was aware of the date for this hearing and has been duly served with the Landlord’s Notice of Hearing in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not call into the conference, I find that the Tenant abandoned their Application and as a result, I dismiss the Tenant’s Application to cancel the Notice and to request more time to dispute the Notice. The hearing was conducted in the Tenant’s absence and the Landlord’s Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Should the Landlord receive an Order of Possession for the rental unit, in accordance with Section 55 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord receive compensation for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord provided the following undisputed testimony:

The 18-month, fixed term tenancy began on July 1, 2014 and continued on as a month-to-month tenancy. The monthly rent is \$800.00 and is due on the first of each month. The Landlord collected and still holds a \$400.00 security deposit.

The Landlord testified that the Tenant had been regularly paying rent up until September 1, 2018. On September 10, 2018, the Landlord posted the Notice on the Tenant's door. The Notice contained information that there was \$800.00 owing for September 2018 rent and that the Tenant had five days to pay the rent or to move out of the rental unit by September 20, 2018. The Landlord corrected the effective date of the Notice and acknowledged that it should have been for September 23, 2018.

The Landlord stated that the Tenant did not pay the rent, nor did he move out of the rental unit by the corrected effective date, therefore, the Landlord applied for Dispute Resolution on September 24, 2018. The Landlord stated that the Tenant contacted him in early October 2018 and made a payment of \$1,600.00, which the Landlord accepted as "use and occupancy" for the rental unit for September and October 2018.

The Tenant did not pay rent for November 2018 and is still occupying the rental unit. The Landlord is requesting a two-day Order of Possession for the rental unit, a Monetary Order for the November rent and to be compensated for the filing fee.

Analysis

The Tenant failed to pay the rent in full, as identified as owing in the Notice, within five days of receiving the Notice. The Tenant did not make Application pursuant to Section 46(4) of the Act within five days of receiving the Notice. In accordance with Section 46(5) of the Act, the

Tenant's failure to take either of these actions within five days led to the end of this tenancy on the effective date of the notice. In this case, this required the Tenant to vacate the premises by September 23, 2018. As that has not occurred, I find that the Landlord is entitled to a two-day Order of Possession. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit within the two days required, the Landlord may enforce this Order in the Supreme Court of British Columbia.

The Landlord originally applied for a Monetary Order for unpaid rent; however, since that time, the Tenant has paid the Landlord for the use and occupancy of the rental unit for the months of September and October 2018. As the date for vacant possession of the rental unit is in question, I am not going to award the Landlord a Monetary Order for the November rent; however, the Landlord may consider reapplying for any future losses he incurs regarding this tenancy.

I find that the Landlord's Application has merit and that he should be compensated for the cost of the \$100.00 filing fee.

Conclusion

I dismiss the Tenant's Application without leave to reapply.

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord has established a monetary claim, in the amount of \$100.00, the amount in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to deduct the \$100.00 from the Tenant's security deposit of \$400.00.

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: November 06, 2018

Residential Tenancy Branch