



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAROD PROPERTIES CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL, FFL

Introduction

This hearing dealt with an application by the landlord under the Residential Tenancy Act (the *Act*) for the following:

- An order for possession pursuant to section 46 and 55;
- A monetary order for unpaid rent pursuant to section 67;
- An order to retain the security deposit pursuant to section 72; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by teleconference. The landlord's agent JN appeared for the landlord ("the landlord"). The tenant appeared. Both parties provided affirmed testimony and were given the opportunity to make submissions as well as present oral and written evidence.

The landlord acknowledged receipt of the Notice of Hearing and Application for Dispute Resolution served by the tenant following a Review Consideration Decision directing a new hearing, reference to which appears on the first page of this decision. Each party acknowledged receipt of the other party's materials. I find each party was served in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The parties agreed they entered into a residential tenancy agreement in September 2010. Rent is \$1,432.00 a month payable on the first of the month. A copy of the agreement was submitted as evidence.

The tenant testified he paid the landlord a security deposit of \$600.00 at the beginning of the tenancy which the landlord holds. The tenant has not provided the landlord with authorization to retain any of the security deposit.

The landlord issued a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice") which the parties agreed the landlord posted to the tenant's door on December 6, 2018, thereby affecting service under section 90 on December 9, 2018, claiming unpaid rent of \$1,432.00 for December 2018.

The Notice requires the tenant to pay the rent and utilities to the landlord or file an Application for Dispute Resolution within five days. The landlord submitted a copy of the Ten-Day Notice with an effective vacancy date of December 16, 2018 (corrected to December 19, 2018) as evidence.

The parties agreed the tenant did not pay the full amount of rent owing or file an Application for Dispute resolution within five days, that is, by December 14, 2018.

The parties testified the tenant paid the following amounts by e-transfer with corresponding dates on the outstanding rent:

- December 10, 2018 - \$1,250.00
- December 15, 2018 - \$182.00 (the balance owing for rent for December 2018)

The tenant has made subsequent monthly rent payments and agreed the landlord received them for "use and occupancy only"; the tenant continues to reside in the rental unit. The landlord stated the tenant is not in arrears of rent.

The tenant submitted substantial documentary and oral evidence claiming the landlord unilaterally changed how the landlord permitted the tenant to pay rent and this accounted for the late payments in December. As a result, the tenant claimed he was unable to pay the rent within the 5-day period, that is by December 14, 2018.

The parties agreed that the landlord blocked the tenant's email from mid-November 2018 to December 3, 2018 thereby preventing the tenant from paying rent by e-transfer during this time; e-transfer was the method for payment of rent used by the parties before this.

The landlord testified he took this step of blocking e-transfers from the tenant following several instances of delay in the tenant's payment of rent which the tenant attributed to the internet.

Analysis

I have reviewed all documentary evidence and testimony.

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the tenant was served with the Ten-Day Notice in accordance with sections 88 and 90 of the *Act*.

I find the tenant did not pay the overdue rent in full or dispute the Ten-Day Notice within the five-day period following service.

Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice (being the corrected date of December 19, 2018) requiring the tenant to vacate the rental unit by that date.

The tenant paid the landlord part of the rent owing for December 2018 within the 5-day period. I find the tenant knew that he could pay the landlord the amount owing for rent by e-transfer as he successfully did so with part of the rent on December 10, 2018. I do not accept the tenant's assertion that he was unable to pay the rent in full within the 5-day period for any reason attributable to the landlord.

As the tenant continues to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service.

I further find the landlord is entitled to reimbursement of the filing fee in the amount of \$100.00.

Conclusion

I grant a monetary order to the landlord in the amount of \$100.00.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

I also grant the landlord an order of possession effective two days after service on the tenant.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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: February 21, 2019

Residential Tenancy Branch