



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding British Columbia Housing Management Commission
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR,. MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on her door by landlord representative TW who testified to having posted this notice at 8:51 a.m. on August 12, 2013. The tenant also confirmed that she received a copy of the landlord's dispute resolution hearing package sent to her by the landlord by registered mail on August 29, 2013. The tenant also confirmed that landlord representative DK (the landlord) handed her a copy of the landlord's written evidence package on September 26, 2013. I am satisfied that the tenant was served with all of the above documents in accordance with the *Act*.

Issues(s) to be Decided

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 recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy for rent geared to income housing commenced on July 1, 2009. The tenant's current monthly rent was set at \$595.00 as of July 1, 2013.

The landlord issued the 10 Day Notice when \$1,190.00 became owing for this tenancy as of August 1, 2013. The landlord's application for a monetary award of \$1,190.00 included unpaid rent of \$595.00 for each of July and August 2013. At the hearing, the

landlord testified that no further payments from the tenant have been applied to this tenancy since the 10 Day Notice was issued. The landlord requested authorization to increase the amount of the requested monetary award from \$1,190.00 to \$2,380.00 to reflect the non-payment of rent for September and October 2013. I allowed this request to increase the amount of the requested monetary award. The landlord entered into written evidence a detailed tenant rent ledger, in which \$2,380.00 is identified as owing as of October 1, 2013.

The landlord testified that late in the afternoon on October 4, 2013, the last business day before this hearing, the landlord received a cheque from a third party in the amount of \$1,785.00, which the issuer of the cheque had asked to be applied to this tenancy. Under the circumstances, the landlord has not attempted to negotiate this cheque and does not intend to do so.

The tenant testified that the landlord is mistaken in claiming that she has not paid her rent. She testified that shelter cheques, presumably from the Ministry of Social Development, were issued on her behalf on July 4, 2013 for \$595.00, August 2, 2013 for \$595.00, and September 3, 2013 for \$595.00. She confirmed that her male friend also submitted the \$1,785.00 cheque on her behalf on October 4, 2013. The tenant testified that she tried to speak with the landlord and another representative of the landlord but could not get in contact with them. Although the tenant testified that she had records to prove her rent payments, she did not submit any written evidence to support her oral testimony. The tenant said that she had only one receipt/cheque number (0169 for her July 4, 2013 payment) to confirm her rent payments.

Shortly after the landlord served the 10 Day Notice, the tenant contacted the landlord to claim that her male friend had provided a cheque or cheques to the landlord. The landlord testified that she conducted a thorough review of the landlord's records to ensure that the landlord had not overlooked rent payments made on the tenant's behalf. The landlord personally reviewed all third party cheques received for this housing complex and found no record of any cheques other than the October 4, 2013 cheque for \$1,785.00. The landlord left messages with the tenant to discuss this matter, but did not hear back from her. The landlord gave undisputed sworn testimony that cheque number 0169 referred to by the tenant as the cheque for July 2013 was actually the cheque number for the October 4, 2013 payment dropped off at 4:15 p.m. on October 4.

Analysis

I find on a balance of probabilities that the landlord's sworn testimony and detailed rent ledger provide a more credible summary of the amounts owing and paid by the tenant over the course of this tenancy than the tenant's sworn oral testimony. If the tenant

were correct in her claim that she has receipts or records to prove that rent has been paid for her tenancy, she should have submitted these records into written evidence or could have provided these directly to the landlord. The tenant's failure to dispute the landlord's sworn testimony regarding cheque number 0169 suggests to me that the landlord was correct in maintaining that this cheque number was actually for the only cheque received by the landlord towards this tenancy on October 4, 2013 and not on July 4, 2013, as the tenant maintained. I give little weight to the tenant's sworn testimony that she has "records" to prove her claim that she has paid all of her monthly rent. She did not produce these records for this hearing and did not provide details regarding these alleged payments other than her sworn testimony.

I find that the tenant failed to pay the amount identified as owing in the 10 Day Notice in full within five days of being deemed to have received that Notice on August 15, 2013. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day 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 her tenancy on the effective date of the notice. The provision of a third-party cheque the day before this hearing which has not been negotiated by the landlord does not reinstate this tenancy. In this case, I find that the tenant was required to vacate the premises by August 25, 2013. As that has not occurred, I find that the landlord is entitled to a 2 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 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I also find that the tenant has not paid rent for July, August, September or October 2013. Although a cheque was submitted on her behalf on October 4, 2013, the landlord has not attempted to negotiate this cheque and it remains unclear as to whether this cheque is negotiable. Given the timing of the provision of this cheque, I find that the landlord is entitled to a monetary award in the amount of \$2,380.00, the total resulting from the tenant's failure to pay four month's rent at \$595.00 per month. If the landlord is successful in negotiating the cheque in the amount of \$1,785.00 provided to the landlord on the tenant's behalf on October 4, 2013, I order that this amount be applied to partially satisfy the monetary Order issued in this decision.

As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** 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.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the landlord's filing fee:

Item	Amount
Unpaid July 2013 Rent	\$595.00
Unpaid August 2013 Rent	595.00
Unpaid September 2013 Rent	595.00
Unpaid October 2013 Rent	595.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,430.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 08, 2013

Residential Tenancy Branch

