



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Father Delestre Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, 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; 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's advocate/support worker joined the teleconference after a few minutes, and assumed the role of advocate. Prior to joining the hearing, neither the tenant nor her assistant gave any indication that anyone else would be assisting the tenant.

The landlord's male representative (the landlord) testified that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was handed to the tenant by staff of the landlord on September 11, 2013. The tenant confirmed that she was handed the 10 Day Notice on September 11, 2013. I am satisfied that the landlord served the 10 Day Notice to the tenant in accordance with the *Act*.

The landlord testified that he posted a copy of the landlord's dispute resolution hearing package on the tenant's door on October 4, 2013, accompanied by the other two landlord representatives at this hearing. Both of these representatives confirmed that they observed the landlord post the hearing package on the tenant's door on October 4, 2013. The tenant confirmed that she received the landlord's dispute resolution hearing package posted on her door on October 4, 2013. I am satisfied that the landlord served the hearing package, including a copy of the landlord's application for an Order of Possession to the tenant in accordance with section 89 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This periodic tenancy for subsidized housing commenced on December 1, 2012. At that time, the economic rent was set at \$973.00, with the tenant initially paying \$595.00 each month. By September 2013, the parties agreed that the tenants' portion of the monthly rent is \$257.00, payable in advance on the first of each month.

The landlord testified that he often delays issuing a 10 Day Notice until well after the 2nd of each month, the date when the landlord can legally take such action. He said that he and his staff delay such action in recognition of the delays that sometimes occur while tenants attempt to secure shelter payments from the Ministry of Social Development (the Ministry). In this case, the landlord gave undisputed evidence that \$257.00 in rent for September 2013 was owing when the landlord's representative, PW, issued the 10 Day Notice. He gave undisputed testimony that the tenant did not pay the \$257.00 identified as owing for September 2013, within 5 days of receiving the 10 Day Notice. He testified that the tenant has not paid anything towards her October or November 2013 rent. He said that a few weeks ago, the tenant approached the landlord with a proposal to pay some of her rent. However, when the landlord informed her that any payments she were to make would be accepted for use and occupancy only and not to reinstate her tenancy, she became rude and abusive and refused to make any payment.

The tenant testified that she requested the landlord's issuance of the 10 Day Notice in order to obtain action from the Ministry to pay a shelter allowance for her rent. She described the 10 Day Notice as being a "fake notice" one intended by both she and the landlord to speed up the Ministry's process in providing her with shelter assistance. The tenant's advocate stated that these arrangements are frequently undertaken by tenants and their landlords to obtain faster action from the Ministry. The tenant and her advocate maintained that the Ministry unduly delayed its attendance to her request for shelter assistance. The tenant said that she was unaware that the Ministry had not taken corrective action until the tenant received the landlord's hearing package posted on her door.

The landlord denied that the landlord's representative issued a "fake notice" as the tenant maintained. He said that any 10 Day Notice is not issued until rent becomes owing. He said that additional days are often given to tenants to resolve the unpaid rent owing before a 10 Day Notice is issued. He gave undisputed sworn testimony that the tenant has not made any actual payments to the landlord since the 10 Day Notice was issued.

Analysis

As I noted at the hearing, the issue validly before me is whether or not the tenant paid her monthly rent for September 2013 in full, within five days of receiving the 10 Day Notice. The landlord's testimony that police have been called to the rental unit a number of times recently and the tenant's assistant's claim that the landlord's practices are being called into question by members of the community have no bearing on the application before me. These allegations are irrelevant with respect to my consideration of the landlord's application for an Order of Possession for unpaid rent.

While the tenant may have earnestly believed that the Ministry was taking care of this matter for her, she did not ensure that this occurred within the 5 days identified very clearly on the 10 Day Notice. There is undisputed evidence that the tenant failed to pay the \$257.00 in rent identified as owing in the 10 Day Notice rent within five days of receiving that Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of the above-noted actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by September 24, 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.

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(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In order to implement my decision that the landlord is entitled to recover the filing fee from the tenant, I order the landlord to retain \$50.00 from the tenant's security deposit. The retained value of the tenant's security deposit currently held by the landlord is hereby reduced from \$486.50 to \$436.50.

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 13, 2013

Residential Tenancy Branch

