



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 43 Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction, Preliminary and Procedural Matters-

The landlord's application was originally conducted by way of a direct request proceeding, pursuant to section 55(4) of the Residential Tenancy Act ("Act"), via the documentary submissions only of the landlord, requesting an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent.

On April 2, 2015, an adjudicator of the Residential Tenancy Branch ("RTB") issued an Interim Decision on the landlord's application, which stated that the landlord had not supplied adequate accounting records to support the amount of unpaid rent listed on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice"), the basis of their application. In the Decision of April 2, 2015, the adjudicator ordered the direct request proceeding to be reconvened to a hearing in order to hear from the landlord as to make a determination of the issues had by the adjudicator, in order to make findings on the landlord's application for dispute resolution under the direct request process.

This was that participatory hearing.

In the Decision of April 2, 2015, the adjudicator ordered the landlord to serve the tenant with the notice of the reconvened hearing and all required documents within three days of the receiving the Decision in accordance with section 89 of the Act. At this participatory hearing, the landlord and the tenant appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and neither party raised any issue regarding service of the evidence or application.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit and a monetary order due to unpaid rent?

Background and Evidence

The undisputed evidence shows that this tenancy began on October 1, 2008, current market rent is \$1,352.00, and a security deposit of \$400.00 was paid by the tenant on September 5, 2008.

The landlord submitted further evidence showing that the tenant's rent is subsidized by a government agency and that the tenant pays the difference between her subsidy and current market value rent. As such, the tenant's monthly contribution is evaluated annually based upon her income. Into evidence, the landlord submitted the written tenancy agreement and an explanation of the tenant's annual evaluation.

The landlord's undisputed evidence shows that on March 5, 2015, the tenant was served with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$4,139.49 as of March 1, 2015. The effective vacancy date listed on the Notice was March 19, 2015. The landlord supplied a copy of the Notice and proof of service.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord submitted documentary evidence showing a record of payments and rent owed for the time period in question in explanation as to the amount listed on the Notice, which reflected unpaid rent of \$4,478.49 at the time the Notice was issued to the tenant. The landlord's evidence showed that this amount should have been listed as unpaid rent on the Notice, rather than the \$4,139.49; however, the monthly rent owing was not recorded on the rent card before the rent payments were entered.

The tenant acknowledged not filing an application for dispute resolution in dispute of the Notice; however, the tenant attempted to explain that her stove was not functioning properly during the tenancy and that she purchased one herself.

Analysis

I find the landlord submitted sufficient evidence to prove that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case March 19, 2015.

I therefore find that the landlord is entitled to and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenant.

The order of possession for the rental unit is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

I also find that the landlord has now provided sufficient evidence to clarify and support the amount of unpaid rent listed on the Notice. I therefore find the landlord is entitled to a monetary award of \$4,139.49 for the unpaid rent listed on the Notice.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$4,139.49, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

The landlord submitted that the tenant has now accumulated a further rent deficiency since the Notice was issued. The landlord is at liberty to apply for those amounts in addition to the rent not recorded on the Notice. I have not addressed those amounts as they were not listed on the landlord's application.

Conclusion

The landlord's application for an order of possession for the rental unit and a monetary order for unpaid rent has been granted.

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: May 20, 2015

Residential Tenancy Branch

