



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIRAE INVESTMENTS LTD.
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 tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") was personally served to Tenant KH on January 7, 2015. Tenant KH confirmed receipt of the 10 Day Notice. The landlord testified that the Application for Dispute Resolution package was served to the tenants by posting it on their door on April 11, 2015. Based on the testimony of both parties, I accept the tenants were sufficiently served with both the 10 Day Notice and the landlord's dispute resolution package.

Issue(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 for this application from the tenants?

Background and Evidence

This tenancy began February 2011 although a written tenancy agreement was not signed by the parties until February 18, 2013. The current rental amount is \$360.00 payable on the first of each month. Both parties agreed that the tenants did not pay a security deposit with respect to this tenancy.

The landlord has applied for an Order of Possession for unpaid rent for the month of January 2015. The landlord testified that the tenants did not pay rent of \$360.00 due on

January 1, 2015. The landlord testified that the tenant had rental arrears from 2014. The landlord testified that, although the tenants paid \$400.00 over the course of January 2015, a significant amount of arrears remained outstanding (approximately \$1800.00). The landlord testified that previous Notices to End Tenancy had been issued but the tenants and landlord had made payment arrangements in light of very difficult personal circumstances for the tenants.

The landlord testified that the tenants have made some payments over the course of 2015. The landlord testified that the tenant paid \$425.00 in March 2015 and \$660.00 in April 2015. The landlord testified that all payments made by the tenants have been received by the landlords with a receipt to the tenant indicating, "for use and occupancy only".

The landlords testified that they have acknowledged Tenant KH's difficult personal circumstances with a very ill husband, and other family circumstances leading to financial hardship. However the landlords testified that the tenants were not able to meet their rental obligations. Tenant KH testified that she had recently acquired work that would allow her to make regular payments however the landlords required the full amount of outstanding rent to be paid.

Tenant KH acknowledged that she owes outstanding rental amounts and also acknowledged that she has not been able to meet the terms of payment arrangements made with the landlord. The landlords have taken extraordinary intermediate steps to arrange payment arrangements with the tenant in this matter. However, the tenants have not been able to maintain those payments at this time. On January 7, 2015, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenants have not been able to pay the rental arrears after receiving the 10 Day Notice.

Analysis

The tenants failed to pay the January rent and the rental arrears within five days of receiving the 10 Day Notice to End Tenancy. Tenant KH acknowledges that unpaid rent and her inability to make payment at this time. The tenants have 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 tenants' failure to take either of these actions within five days led to the end of this tenancy on the effective date of the notice. As the tenants have not been in a position to meet their rental obligations, I find that the landlord is entitled to an Order of Possession to be served on the tenants at their discretion after its effective date.

The landlord also sought to recover the filing fee for this application. Despite the hardship faced by Tenant KH, she acknowledged that the landlord was entitled to the filing fee in these circumstances. I include a monetary order in the amount of \$50.00 dated July 31, 2015 as the landlords are entitled to recover the filing fee based on their success in this application.

Conclusion

I grant the landlords an Order of Possession to be effective June 30, 2015 and after notice is sufficiently served to the tenants. If the tenant(s) do not vacate the rental unit by the date required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary order in the amount of \$50.00 dated July 31, 2015 in favour of the landlords.

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: June 16, 2015

Residential Tenancy Branch

