



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 a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The agent testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on August 19, 2015, at the rental unit address and that the tenant continues to occupy the rental unit. The agent provided a registered mail receipt with tracking number in evidence and confirmed that the name and address matched the name of the tenant and the rental unit address. The agent testified that she tracked the registered mail package online and the package showed that the tenant signed for and accepted the registered mail package on August 20, 2015, which is supported by the online registered mail tracking website information. Based on the above, I find the tenant was duly served as of August 20, 2015, the day she signed for the registered mail package.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?

- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on November 1, 2011. The tenant's current subsidized rent contribution is \$450 per month and is due on the first day of each month. The tenant did not pay a security deposit or pet damage deposit during the tenancy.

The agent testified that a 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated July 8, 2015 was posted to the tenant's door on July 8, 2015 at 8:20 a.m. with an effective vacancy date of July 21, 2015. The tenant did not dispute the 10 Day Notice and did not pay the amount of rent owed, \$1,050, within five days of receiving the 10 Day Notice.

The agent testified that as of the date of the hearing, the tenant owes a total of \$5,318 in rent payment arrears up to and including September 2015. The agent submitted a document explaining why the amount listed on the 10 Day Notice was so much less than the claim for unpaid rent arrears and the claim for \$5,768, which includes unpaid October 2015 rent. The agent testified that prior to issuing the 10 Day Notice, a repayment schedule was agreed to by the parties which results in a zero balance showing temporarily on the tenant account ledger. However, as soon as the tenant failed to make the first payment in accordance with the repayment schedule, the entire amount of unpaid rent arrears were placed back onto the tenant account ledger as arrears owing. As of the date of the hearing, which could not include October 2015 rent as that would be premature given that the tenant has until midnight on October 1, 2015 to pay rent for October 2015, the current rent payment arrears is \$5,318. As a result, the landlord's monetary claim is reduced to \$5,318 and does not include any unpaid rent for October 2015.

The landlord submitted a copy of the tenant's' account ledger, registered mail receipts, the tenancy agreement and the 10 Day Notice in evidence.

Analysis

Based on the documentary evidence and the agent's undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the 10 Day Notice is listed as July 21, 2015, which is 10 days after the tenant was deemed to have received the 10 Day Notice on July 11, 2015 as pursuant to section 90 of the *Act*, the tenant is deemed served three days after the 10 Day Notice was posted to the tenant's door on July 8, 2015. I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, July 21, 2015. The tenant continues to occupy the rental unit. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

Claim for unpaid rent and loss of rent – I accept the agent's undisputed testimony that the tenant failed to pay a total of \$5,318 in rental arrears up to and including September 2015 rent. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$5,318** comprised of unpaid rent and loss of rent as the tenancy ended on July 21, 2015 and the tenant has been overholding in the rental unit since that date.

As the landlord has succeeded with their application, I grant the landlord the recovery of the filing fee in the amount of **\$100**.

The landlord has established a total monetary claim of **\$5,418** comprised of unpaid rent, loss of rent, plus the recovery of the \$100 filing fee. I grant the landlord a monetary order under section 67 for the amount owing by the tenant to the landlord in the amount of **\$5,418**.

Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$5,418 as indicated above. The landlord has been granted a monetary order under section 67 for the amount owing by the tenant to the landlord in the amount of \$5,418. This order must be served on the

tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 2, 2015

Residential Tenancy Branch

