



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VERNON MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

Introduction

This matter initially proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act* (the "Act"). That non-participatory hearing dealt with an Application for Dispute Resolution by Direct Request (the "Application") made by the Landlords for an Order of Possession for unpaid rent.

On September 22, 2015 an Interim Decision was made by me which informed the parties that the Landlords' Application could not be progressed through a non-participatory hearing because I was not satisfied the Tenant had been served with the notice to end tenancy. However, I found that this determination could be made during a participatory hearing with the parties. As a result, the Direct Request Proceeding was adjourned to reconvene in this participatory hearing.

Both parties appeared for the hearing and provided affirmed testimony. The hearing used the Landlords' written submissions which were provided with the Application. The Tenant confirmed receipt of the Notice of Hearing documents for this hearing which were served by the Landlord. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present evidence, make submissions to me and cross examine each other on the evidence provided.

Preliminary Issues

The parties confirmed the Tenant was still residing in the rental unit and had no intention of vacating it. The Landlord explained that he wanted to make a monetary claim for the outstanding rent (\$2,000.00) and to recover the filing fee in this hearing. The Tenant did not dispute the amount of rent outstanding. Therefore, I allowed the Landlord to amend his Application to include a request for a Monetary Order for unpaid rent and the recovery of the filing fee pursuant to Section 64(3) (c) of the Act.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession and a Monetary Order?

Background and Evidence

The parties agreed that this tenancy started on October 1, 2010 for a fixed term tenancy of six months which then continued on a month to month basis. Rent in the amount of \$835.00 is payable on the first day of each month.

The Tenant confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on September 4, 2015 which was attached to her door. The Notice was provided in written evidence and shows a vacancy date of September 15, 2015 due to \$1,165.00 in unpaid rent.

The Landlord stated in addition to the rental arrears for September 2015, the Tenant had failed to pay rent for October 2015. Therefore, the total amount of rental arrears being claimed by the Landlords was \$2,000.00.

When the Tenant was asked as to the reasons why she had not paid the rent, disputed the notice, or moved out of the rental unit, the Tenant explained that due to job issues she was having difficulty paying all her rent. The Tenant testified that she had recently got more work and would be in a position to pay rent at the end of October 2015. The Tenant did not dispute the Notice or the amount of rent outstanding in this tenancy.

The Landlord stated that the Tenant had sporadically paid rent during this tenancy in this manner and that unless the Tenant could pay rent immediately, he was seeking to end the tenancy as per the Notice.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act.

I accept both parties undisputed evidence that the Tenant was served with the Notice, which complied with the Act, on September 4, 2015. Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, the tenant must pay the overdue rent or make an Application to dispute the Notice. If the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the vacancy date on the Notice.

Based on the foregoing, I find that the Tenant has failed to pay rent and did not dispute the Notice. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the vacancy date of the Notice. As the vacancy date on the Notice has now passed, the Landlords are entitled to an Order of Possession which is **effective two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

Based on the undisputed oral evidence of the parties, I also accept that the Tenant has failed to pay rent to the Landlords in accordance with the Act and the signed tenancy agreement. Therefore, the Landlords are also awarded the unpaid rent claimed in the amount of **\$2,000.00**.

As the Landlords have been successful in this matter, the Landlords are also entitled to recover the **\$50.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the Landlords are issued with a Monetary Order for **\$2,050.00**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment.

Conclusion

The Tenant has failed to pay rent as required by the Act and the signed tenancy agreement. Therefore, the Landlords are granted an Order of Possession effective two days after service on the Tenant. I also grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of \$2,050.00.

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 13, 2015

Residential Tenancy Branch

