



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STRATTON VENTURES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MDNC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on January 27, 2016. The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities; to keep the security deposit; for money owed or compensation for damage or loss under that *Act*, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord had initially filed an Application for Dispute Resolution by Direct Request and had submitted 12 pages of evidence along with that application on January 27, 2016. That initial application did not meet the requirements to be completed by Direct Request and the Landlord was advised to amend their application which was scheduled to be heard through this participatory hearing as stated above.

Section 1 of the *Act* defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement.

The hearing was conducted via teleconference and was attended by two agents for the corporate Landlord. Both Agents met the definition as a landlord as provided by section 1 of the *Act*. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

Each Landlord gave affirmed testimony. No one was in attendance on behalf of the Tenant. The Landlord testified they served the Tenant with copies of their application for Dispute Resolution, the hearing documents, and their evidence via registered mail on February 2, 2016. They submitted the Tenant signed for the registered mail on February 3, 2016.

Section 89(1)(a) of the *Act* stipulates that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to a landlord, may be given to the respondent by leaving a copy with the person.

Based on the above, I accepted the affirmed submissions of the Landlords and find the Tenant was sufficiently served notice of this proceeding in accordance with section 89(1)(a) of the Act. Therefore, I proceeded with the hearing in absence of the Tenant.

On January 29, 2016 the Landlord submitted 13 pages of evidence to the Residential Tenancy Branch (RTB). On February 3, 2016 additional evidence consisting of copies of registered mail receipts were received from the Landlord. All of the Landlord's submissions will be considered as evidence for this proceeding.

Issue(s) to be Decided

- 1) Has the Landlord proven entitlement to an Order of Possession?
- 2) Has the Landlord proven entitlement to a monetary order?

Background and Evidence

The Landlords testified the Tenant entered into a written tenancy agreement that began on July 1, 2014 for occupation of a different rental unit in a different building. A flood occurred in that building and the Tenant was moved into a different building and effective November 1, 2014.

No written tenancy agreement was entered into for the new rental unit or tenancy which began on November 1, 2014. The Tenant's rent remained at \$1,000.00 per month and the Tenant's security deposit of \$500.00 was transferred to the new unit.

The Landlords testified \$500.00 of the Tenant's rent had previously been paid directly to them by the Ministry of Social Development and the Tenant was required to pay the remaining \$500.00. The Landlords submitted when the Tenant began to fall behind in her portion of the rent they attempted to work with her in ways to allow her to get caught up. They stated they even offered the Tenant a different rental unit that required a lower payment of rent. However, the Tenant refused the offer to move and then simply stopped responding to the Landlord's requests for the past due rent.

The Landlords affirmed they served the Tenant another 10 Day Notice when they posted it to her door on January 5, 2016. That Notice indicated the Tenant owed \$1,860.00 in rent that was due January 1, 2016, as per the copy submitted into evidence.

The Landlord, S.S.G. submitted she had posted a notice of entry on the Tenant's door so she could gain entry to speak to the Tenant. When the Tenant opened the door the Landlord told her that they would be proceeding with the eviction Notice if the Tenant could not pay her outstanding rent.

The Landlords asserted that no money has been received from the Ministry for rent for February or March 2016. They confirmed receipt of the payment in December 2015 that was applied to the Tenant's January 2016 rent and then the payments simply stopped.

The Landlords now seek to recover the accumulated unpaid rent up to January 2016 and the rent for February and March 2016 as the Tenant remains in the rental unit and has not made a payment to the Landlord since December 2015, as per the tenant ledger submitted into evidence. The Landlords also wish to be granted an Order of Possession.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlords and corroborated by their evidence.

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the aforementioned, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

Section 7(2) of the Act stipulates that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on January 8, 2016, three days after it was posted to the door, pursuant to section 90 of the Act. Therefore, the effective date of the Notice was January 18, 2016. The Tenant neither paid the rent nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **January 18, 2016**. Accordingly, I grant the Landlords' request and issue them an Order of

Possession effective 2 Days upon service to the Tenant. In the event that the Tenant does not comply with this Order it may be enforced through Supreme Court.

Section 26 of the Act stipulates, in part, that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

The undisputed evidence was the Tenant has not paid the \$1,860.00 accumulated unpaid rent up to January 2016, in accordance with section 26 of the Act. As per the aforementioned, I find the Landlords have met the burden of proof and I award them accumulated unpaid rent up to January 31, 2016, in the amount of **\$1,860.00**.

As noted above, this tenancy ended **January 18, 2016**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy and/or loss of rent for the rental unit for February and March 2016, not rent. I approve the Landlords' requests to consider awarding them compensation for February 2016 and March 2016 given the delay from the time the Landlord filed their application for Dispute Resolution on January 28, 2016 to the March 15, 2016 hearing date.

It is reasonable to conclude that the Tenant would be expected to pay for their occupation of the rental unit until such time as the Landlord regains possession. I have considered that the Tenant continues to occupy the rental unit and the Landlord will not regain possession of the rental unit until after service of the Order of Possession. Once the Landlord regains possession they are required to mitigate there losses by trying to made ready the unit and to re-rent the unit for as soon as possible, pursuant to section 7(2) of the Act, as listed above. Therefore, I conclude the Landlord is entitled to payment for use and occupancy and any loss of rent for the period of February 1, 2016 to March 31, 2016 in the amount of **\$2,000.00** (2 x \$1,000.00).

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have been partially successful with their application; therefore I award recovery of the **\$100.00** filing fee

I find this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit plus interest as follows:

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$500.00 security deposit since July 1, 2014 or since November 1, 2014 when it was transferred to the new rental unit.

Accumulated Unpaid Rent to Jan. 2016	\$1,860.00
Use & Occupancy and Loss of Rent to Mar 31, 2016	2,000.00

Filing Fee	<u>100.00</u>
SUBTOTAL	\$3,960.00
LESS: Security Deposit \$500.00 + Interest 0.00	<u>- 500.00</u>
Offset amount due to the Landlord	<u>\$3,460.00</u>

The Tenant is hereby ordered to pay the Landlord the offset amount of \$3,460.00, forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$3,460.00** which may be enforced through Small Claims Court after service to the Tenant.

Conclusion

The Landlord was successful with their application and was awarded an Order of Possession effective 2 days upon service and a Monetary Order award of \$3,960.00. The monetary award was offset against the Tenant's security deposit leaving a balance owed to the Landlord of **\$3,460.00**.

This decision is final, legally binding, 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: March 15, 2016

Residential Tenancy Branch