



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 490892 BC LTD. dba HOWARD JOHNSON HARBOURSIDE HOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and cause; a Monetary Order for unpaid rent; and, authorization to retain the security deposit. At the commencement of the hearing only the landlord appeared. Approximately eight minutes after the hearing commenced another person appeared and claiming to be appearing on the tenant's behalf. The tenant briefly appeared and confirmed that this person was authorized to represent him during these proceedings. I summarized the testimony I had heard from the landlord up to that point for the benefit of the tenant's agent. Accordingly, I have made this decision after hearing from both parties and considering the documentary evidence that was submitted by the landlord in accordance with the Rules of Procedure.

Preliminary and Procedural Matters

The landlord named two co-tenants on this application: a male and a female tenant. The female tenant did not appear and was not represented. Both the landlord and the male tenant's agent confirmed that the female respondent named on this application is deceased. The definition of "tenant" under the Act includes the estate of a deceased tenant. Accordingly, it is possible for a tenancy to continue despite the death of a tenant. The landlord's agents submitted that they are uncertain as to identity of the representative for the deceased tenant's estate but the landlord confirmed that the deceased tenant's personal possessions were removed from the rental unit by a daughter of the deceased tenant. I have amended the application to identify the female tenant by naming her estate.

Both the landlord and the tenant's agent confirmed that the hearing documents were posted to the door of the rental unit. An Application for an Order of Possession may be served by posting the Application and other related hearing documents on the door of the rental unit where the tenant resides. The male tenant still resides in the rental unit and his agent confirmed receipt of the landlord's hearing package. Since the female

tenant is deceased she is no longer residing in the rental unit; however, considering the landlord has not been notified as to the identity of the representative for the tenant's estate, pursuant to section 71 of the Act, I have to deemed the deceased tenant's estate to be sufficiently served with landlord's Application as it pertains to the landlord's request for an Order of Possession.

I noted that the landlord's Application for an Order of Possession indicated two reasons for ending the tenancy: unpaid rent and cause. The landlord's evidence package included a 10 Day Notice to End Tenancy for Unpaid Rent but a 1 Month Notice to End Tenancy for Cause was not included. I confirmed with the landlord that a 1 Month Notice was not issued. Therefore, I amended the Application to reflect that the landlord's request for an Order of Possession pertains to unpaid rent only.

I noted that in the details of dispute that the landlord was of the position that the male respondent is an occupant of the rental unit and he is not named in the tenancy agreement; yet, the 10 Day Notice before me identifies the male respondent as a tenant. During the hearing, the landlord recognized that the male respondent had paid rent to the landlord for which receipts were issued to him. The tenant's agent also confirmed that the male respondent considers himself a tenant since he has paid rent to the landlord for which he has received receipts. Accordingly, the landlord withdrew its position that the male respondent is not a tenant and sought to proceed on the basis the male respondent is a tenant and that the tenancy should end for unpaid rent.

An Application for a Monetary Order must be served pursuant to section 89(1) of the Act and posting on the door is not a permissible method of service for a Monetary Order. Therefore, I did not consider the landlord's request for a Monetary Order. This portion of the landlord's Application has been dismissed with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

A former landlord and the deceased tenant signed a tenancy agreement on September 1, 2008. The tenant was required to pay rent of \$700.00 on the first day of every month. Approximately three years ago the male tenant moved in to the rental unit with the female tenant. After the male tenant moved in the landlord started receiving \$350.00 from or on behalf of the female tenant and the male tenant would present payment of

\$350.00. In late October 2015 female tenant died. The male tenant continues to reside in the rental unit.

When the female tenant died the landlord had already received \$350.00 from the Ministry on behalf of the female tenant for rent for the month of November 2015 and the male tenant presented the balance of \$350.00 on November 1, 2015. Accordingly, rent for the month of November 2015 was satisfied.

For the month of December 2015 the landlord did not receive any rent from or on behalf of the female tenant or her estate. The male tenant presented \$350.00 to the landlord on two occasions in December 2015. The landlord considered these two payments to satisfy rent for December 2015 although the tenant considered the first payment to be his "half" of rent due for December 2015 and the second payment as being his "half" of the rent for January 2016.

On January 4, 2016 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice has a stated effective date of January 14, 2016 and indicates the male tenant failed to pay rent of \$700.00 + \$175.00. The landlord explained that \$700.00 represents unpaid rent and the \$175.00 represents part of a security deposit. The tenant did not file to dispute the Notice. The tenant paid \$350.00 to the landlord on January 29, 2016. No other rent has been paid since then.

The landlord's agent DB testified that he taped the Notice to the main exterior entry door of the rental unit on January 4, 2016. DB further testified that a picture was taken of the Notice on the door and the activity was noted in the landlord's log book. The other agent appearing on behalf of the landlord, PF, affirmed that she witnessed DB post the Notice on the door of the rental unit after they had knocked on the door and there was no answer. PF also confirmed that a picture was taken of the Notice on the door.

Through the tenant's agent, the tenant submitted that he did not receive the Notice. The tenant acknowledged that the landlord had a discussion with him with respect to rent being \$700.00 per month and that the tenant would have to find a roommate if he could not pay the rent on his own. The tenant submitted that he has tried to find a roommate but has been unsuccessful. The tenant is of limited means and he can not pay the full amount of the rent.

The landlord requested an Order of Possession effective as of 1:00 p.m. on March 10, 2016.

Analysis

Under the Act, a tenant is required to pay the full amount of rent due in accordance with their tenancy agreement. Under section 1 of the Act, a tenancy agreement is defined to include a tenancy agreement that is written, oral, express or implied. Both parties were prepared to recognize that the male occupant became a tenant as evidenced by his payment of rent for a number of years and the landlord's issuance of receipts to him. When the female tenant was alive the two tenants paid rent in the total amount of \$700.00. Accordingly, I accept that there was an implied agreement for a co-tenancy agreement whereby the co-tenants were required to pay rent in the total amount of \$700.00 per month.

A co-tenancy is where there are more than one tenant entitled to possession of a rental unit under a single tenancy agreement. Co-tenants are jointly and severally liable for meeting their obligation under the tenancy agreement. As such, where one co-tenant pays only one-half of the monthly rent, and the other co-tenant does not pay their share, the tenancy may be ended by the landlord for non-payment of rent and the ending of the tenancy would require both co-tenants to vacate the rental unit.

Where a tenant does not pay all of the rent that is due to the landlord under the tenancy agreement, the landlord is at liberty to serve a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

In this case, the landlord issued a 10 Day Notice to the tenant for unpaid rent; however, the issue raised by the tenant's agent was that the 10 Day Notice was not received by the tenant. I considered and explored this issue during the hearing and while I accept that it is possible that the tenant did not receive the Notice, these proceedings and my findings are based on the balance of probabilities. I found the landlord provided credible and corroborated evidence that the subject 10 Day Notice was taped to the door of the rental unit on January 4, 2016. Accordingly, on the balance of probabilities, I found that the tenant was sufficiently served with the 10 Day Notice and the tenant is deemed to have received the 10 Day Notice three days after it was posted pursuant to section 90 of the Act.

Having found the tenant deemed to have received the 10 Day Notice on January 7, 2016, the effective date of the Notice automatically changes to comply with the Act, as provided under section 53. Accordingly, the effective date reads January 17, 2016.

Since it is undisputed that the outstanding rent of \$700.00 was not paid and the tenant did not file to dispute the Notice I find the tenancy has ended pursuant to the 10 Day Notice posted on the door on January 4, 2016. Accordingly, I grant the landlord's request for an Order of Possession.

Provided to the landlord with this decision is an Order of Possession effective at 1:00 p.m. on March 10, 2016 as requested by the landlord.

The landlord is awarded recovery of the filing fee paid for this application. I authorize the landlord to deduct \$100.00 from the tenant's security deposit in satisfaction of this award.

Conclusion

The tenancy has ended for unpaid rent and the landlord is provided an Order of Possession effective at 1:00 p.m. on March 10, 2016 as requested by the landlord.

The landlord's monetary claims were dismissed with leave.

The landlord has been authorized to deduct \$100.00 from the tenant's security deposit to recover the filing fee paid for this application.

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: March 01, 2016

Residential Tenancy Branch