



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX MANAGEMENT SOLUTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF (Landlord's Application)
 CNR (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord on March 21, 2016 and by the Tenant on March 16, 2016. The Landlord applied for an Order of Possession and a Monetary Order for: unpaid rent; to keep the Tenant's security deposit, and to recover the filing fee from the Tenant. The Tenant applied to cancel the notice to end tenancy.

Two agents for the Landlord appeared for the hearing. However, only the female agent provided affirmed testimony during the hearing. The Tenant appeared for the start of the hearing and explained that she had with her another party that was going to represent her in the hearing. However, when I asked the Tenant's agent to give me their name, there was no response and the Tenant exited the conference call. I allowed some time for the Tenant to dial back in but she did not. As a result, I asked an Information Officer from the Residential Tenancy Branch to contact the Tenant using the telephone contact numbers on the Tenant's Application to ask her to dial back into the hearing. However, there was no response. I asked the Landlord's agent to see if she had another contact number for the Tenant and one was provided (this is documented on the front page of this decision). However, the Information Officer was also unable to contact the Tenant on the number provided. The Information Officer made note of these attempts in the electronic records relating to this file.

As a result, I allowed the Tenant 30 minutes to dial into the hearing to give her a fair opportunity to be heard on the matters before me. However, there was no appearance by her during this time. Therefore, I continued to hear the Landlord's undisputed evidence for their Application which is detailed as follows.

The Landlord provided Canada Post evidence to verify that the Tenant had been served with their Application by registered mail. Therefore, I find the Landlords met their service obligations pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act").

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to keep a portion of the Tenant's security deposit for unpaid utilities?

Background and Evidence

The Landlord's agent (the "Landlord") testified that this tenancy started on May 1, 2015 for a fixed term of one year until April 30, 2016 after which point the tenancy will continue on a month to month basis. Rent under the agreement is payable by the Tenant in the amount of \$1,000.00 on the first day of each month. The Tenant paid a \$500.00 security deposit at the start of the tenancy which the Landlord still retains.

The Landlord testified that as per section 3 of the written tenancy agreement, the Tenant is responsible for paying for electricity. The Landlord testified that by the middle of January 2016 the Tenant was in \$474.05 electricity arrears. As a result, the Landlord served the Tenant with a 30 day breach letter requesting the Tenant to pay that utility amount. This letter was provided into evidence and the Landlord testified that it was personally served to the Tenant on January 15, 2016. The Landlord provided a Proof of Service document verifying this method of service which was signed by the Tenant acknowledging receipt of the demand letter. The Landlord testified that a third party for the Tenant paid \$200.00 towards the utility arrears bringing the amount down to \$274.05 which still remains unpaid by the Tenant.

The Landlord testified that as the Tenant failed to pay the utility arrears by February 15, 2016, she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Utilities (the "First Notice") on February 18, 2016. The First Notice shows a vacancy date of February 28, 2016 due to \$274.05.00 in unpaid utilities. The Landlord provided a Proof of Service document which was signed by the Tenant verifying that it was received.

The Landlord testified that by March 1, 2016 the Tenant had only paid for half of the monthly rent. As a result, the Landlord served the Tenant with another 10 Day Notice to End Tenancy for Unpaid Utilities (the "Second Notice") on March 3, 2016. The Landlord provided the Notice into evidence which shows a vacancy date of March 13, 2016 due to \$500.00 in unpaid rent due on March 1, 2016. The Landlord testified that the Second Notice was served to the Tenant by posting it to the door with a witness.

The Landlord testified that on March 22, 2015, the Tenant paid the rental arrears of \$500.00. On March 23, 2016 the Tenant then paid full rent for April 2016. The Landlord pointed me to receipts for these amounts which she had provided into evidence

showing that the monies had been accepted for use and occupancy only as the Tenant had paid rent outside of the five day time limit and there were still outstanding utility arrears. The Landlord requested an Order of Possession to end the tenancy and asked to recover the unpaid utilities from the Tenant's security deposit.

Analysis

Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement **whether or not** the landlord complies with the Act. Section 46(6) of the Act states that if a tenancy agreement requires a tenant to pay utility charges to the landlord and the charges are unpaid more than 30 days after a tenant is given a written demand for payment, then the landlord may treat the utility charges as unpaid rent and may give notice under this section.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a 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 date to which the Notice relates.

Having examined both the First Notice and Second Notice, I find that the contents complied with the requirements of Section 52 of the Act. I also accept the undisputed evidence that the Tenant was served with the Notices pursuant to Section 88 of the Act.

I accept that the Tenant is required to pay for electricity usage as per the written tenancy agreement which the parties entered into. I also accept that the Tenant was given an opportunity to pay the utility charges requested by the Landlord in the breach letter. Therefore, I find that pursuant to Section 46(6) of the Act, the Tenant was in rental arrears in the amount of \$274.05 when the First Notice was served to her. There is insufficient evidence before me that the Tenant paid this amount within the five day time limit provided to her to make the payment. While the Tenant did make an application to cancel a notice to end tenancy, I find the Tenant made her Application on March 16, 2016, which is well outside of the five day time limit that was afforded to the Tenant after the First Notice was served to her on February 18, 2016. In addition, the Tenant failed to appear for the hearing and prove that she had authority to not pay the arrears claimed by the Landlord.

I also find that the Tenant paid the rental arrears for March 2016 on March 22, 2016 for the Second Notice. This being outside of the five day time limit after it was served to the Tenant.

I am satisfied that the Tenant has paid all the rent for this tenancy and that the money for rent was accepted by the Landlord for use and occupancy only, meaning that the tenancy was not re-instated after the Notices were served to the Tenant. However, I accept that the Tenant is in rental arrears for the electricity charges and pursuant to Section 46(4) and (5), I find that the tenancy must end.

As money was accepted from the Tenant for use and occupancy only, I find the Landlord is entitled to an Order of Possession for the end of April 2016 at 1:00 p.m. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit. Copies of this order are attached to the Landlord's copy of this decision.

I also grant the Landlord the \$274.05 for unpaid utilities. As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$374.05. Pursuant to Section 72(2) (b) of the Act, I grant the Landlord's Application to recover this amount from the Tenant's security deposit.

Conclusion

The Tenant has breached the Act by not paying rent under the tenancy agreement. Therefore, I grant the Landlord an Order of Possession effective at the end of April 2016. The Landlord may recover unpaid utilities and the filing fee from the Tenant's security deposit. The Tenant's Application is dismissed without leave to re-apply as she failed to appear for this hearing to prove her 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: April 21, 2016

Residential Tenancy Branch