



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PW COMOX DEVELOPMENT LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

On June 21, 2016, the Landlord submitted an Application for Dispute Resolution for an order of possession; for a monetary order for unpaid rent or utilities; for money owed or compensation for damage or loss; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord and Tenant attended the hearing. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

During the hearing the Tenant announced that she was recording the hearing. The Tenant was informed that recording the hearing was not permitted and she was ordered to stop recording and to delete the recording pursuant to section 6.11 of the Residential Tenancy Branch Rules of Procedure.

The Tenant testified that she did not receive any of the Landlord's evidence for the hearing. She clarified that she did receive the Notice of Hearing, the Landlord's application and a fax information sheet but nothing else.

In response, the Landlord testified that all the evidence submitted to the Residential Tenancy Branch for the hearing was also served to the Tenant at the same time with the Notice of Hearing and Application. The Landlord S.H. testified that she served the Tenant personally by handing all the documents to her in an envelope. The Landlord S.H. testified that she served the Tenant in the gym of the rental property on June 25, 2016. The Landlord S. H. testified that she had another agent for the Landlord with her when she served the Tenant with all the documents.

The Tenant responded by confirming she was served in the gym of the rental property by the Landlord S.H. and a person in a suit, but states she never received all the Landlord's documents. The Tenant testified that she video recorded the service of the documents.

The Landlords evidence is comprised of:

- a copy of the tenancy agreement
- a copy of a storage locker agreement
- photographs of the Notice to end tenancy posted to the Tenant's door

- Bank ledgers showing deposits of funds received from the Tenant.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure states that an applicant must, within three days of the hearing package being made available by the Residential Tenancy Branch (RTB), serve each respondent with copies of the Application, the notice of dispute resolution proceeding, the information package, and any other evidence submitted to the RTB with the Application.

Based on the affirmed testimony of the parties, I prefer the evidence of the Landlord. The Landlord provided her documentary evidence to the RTB at the time of the application on June 21, 2016. The hearing package was made available to the Landlord on June 22, 2016, and the Landlord testified it was served in person to the Tenant on June 25, 2016. The Landlord's testimony regarding the service of the documents complies with rule 3.1 of the RTB Rules of Procedure. The Tenant's testimony confirms the testimony of the Landlord that the Tenant was served in the gym of the rental property on June 25, 2016. The Tenant's testimony that she video recorded the service of the documents in the gym seems odd. It is odd that the Tenant would be prepared to video record the Landlord entering the gym to serve her with documents. The Tenant did not provide a copy of any video footage of the service. I find it more likely than not that the Landlord served all the documents listed above to the Tenant on June 25, 2016.

On July 29, 2016, the Tenant submitted 14 pages of evidence to the Residential Tenancy Branch for the hearing. The quality of some of the evidence is poor as 5 pages of the evidence is almost entirely black and unreadable. The Tenant testified that she did not provide a copy of her evidence to the Landlord. The Tenant testified that she did not send a copy of her evidence to the Landlord because she assumed the hearing would be fine. The Tenant then added that her lawyer told her to send it in and to move forward and that she would need to apply for a judicial review.

The Residential Tenancy Branch Rules of Procedure 3.15 states that a respondent's evidence must be received by the applicant and by the Residential Tenancy Branch not less than 7 days before the hearing.

The Tenant did not provide an explanation as to why her evidence was sent late.

I find that the Tenant was served with Notice of the Hearing on June 25, 2016, and she had sufficient time to prepare and submit her evidence in response to the Landlord's claim. I find it would be prejudicial to the Landlord to adjourn the matter to permit the Tenant to serve the Landlord as the Landlord has already waited 5 weeks for this hearing and is seeking an order of possession and a monetary order for loss of rent. Therefore, the Tenant's documentary evidence is not accepted and will not be considered in this hearing. The Tenant was given the opportunity to provide direct testimony on her evidence.

Issues to be Decided

Is the Landlord entitled to an order of possession due to unpaid rent?

Is the Landlord entitled to a monetary order to recover unpaid rent?

Is the Landlord entitled to money owed or compensation for damage or loss?

Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant agree that the tenancy began on March 8, 2016, as a one year fixed term tenancy. Rent in the amount of \$3,000.00 is payable on the first of each month. The Landlord testified that the security deposit of \$1,500.00 was not received from the Tenant.

The Landlord testified that the Tenant owes the Landlord money for rent and storage fees for the following months:

- For the month of March 2016, the Tenant did not pay the pro-rated amount of rent in the amount of \$2,322.58. The Landlord also testified that the Tenant also failed to pay the pro-rated storage locker amount of \$30.97 and the Tenant failed to pay the security deposit amount of \$1500.00.
- For the month of April 2016, the Tenant paid \$2,978.00 but still owes \$22.00 for rent and \$40.00 for the storage locker.
- For the month of May 2016, the Tenant paid \$2,310.00 but still owes \$690.00 for rent and \$40.00 for the storage locker.
- For the month of June 2016, the Tenant paid \$3,210.00.
- For the Month of July 2016, the Tenant has not paid any money for rent to the Landlord and the Tenant owes \$3,040.00.
- For the month of August 2016, the Tenant has not paid any money for rent to the Landlord and the Tenant owes \$3040.00.

The Landlord provided documentary evidence of bank account deposit slips listing payments received from occupants of the rental units within the rental property. The banking deposit slips provide the name of the Tenant and indicate that the Tenant made the following payments and indicate which payments were returned as non-sufficient funds:

Date	Amount	
March 17, 2016	\$2,328.00	NSF
	\$1500.00	NSF
April 1, 2016	\$2328.00	NSF
	\$1500.00	NSF
April 21, 2016	\$584.00	
	\$514.00	
	\$1280.00	
	\$600.00	
May 3, 2016	\$800.00	
	\$550.00	
	\$450.00	
May 11, 2016	\$510.00	
June 7, 2016	\$800.00	
	\$500.00	
	\$450.00	

	\$900.00	
June 17, 2016	\$560.00	
Total paid	\$8,498.00	

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 3, 2016, ("the 10 Day Notice") on June 3, 2016. The Landlord S. H. testified that the Tenant was served with the 10 Day Notice on June 3, 2016, by posting the 10 Day Notice to the Tenant's door. The 10 Day Notice states that the Tenant has failed to pay rent in the amount of \$5,785.55 which was due on June 1, 2016. The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The 10 Day Notice also explains the Tenant had five days to dispute the Notice.

The Tenant testified that she received the 10 Day Notice posted to her door but she does not recall the date she received it. The Tenant testified that she no longer has the 10 Day Notice because she returned it to the Landlord. The Tenant testified that she did not dispute the 10 Day Notice because the Landlord S.H. told her not to worry about it. The Tenant testified that she didn't think there was anything to dispute.

In response to the Landlord's testimony, the Tenant testified that she has paid all the rent owing for every month. She testified that she paid her June 2016, rent by a third party on Friday June 10, 2016.

The Tenant had a witness present to testify about the payment of rent for June 2016. The witness M.E. provided affirmed testimony that he put a cheque in an envelope and put the envelope under the door of the Landlord. The witness testified that the cheque was in the amount of \$3,040.00.

The Landlord responded to the testimony of the witness by stating that they never received a cheque from the Tenant or from a third party in the amount of \$3,040.00. The Landlord testified that the payments received in June 2016, from the Tenant were all money orders in the amounts of \$800, \$500, \$450, and \$900.

The Landlord has applied for an order of possession and a monetary order for in the amount of \$7,825.55

Section 90 of the *Act* states that a document given or served by posting it on a door is deemed to be received as follows on the 3rd day after it is attached;

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings;

The date the Landlord signed the 10 Day Notice is stated as May 3, 2016. The Landlord testified that he served the Notice on June 3, 2016, for unpaid rent in the amount of \$5,785.55 that was due on June 1, 2016. I accept that the Landlord made a typographic error on the 10 Day Notice. The Notice states the rent was due on June 1, 2016, and the Landlord testified that the Notice was posted to the Tenant's door on June 3, 2016. Section 68 of the *Act* states if a

notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that the person receiving the notice knew, or should have known, the information that was omitted from the notice, and in the circumstances, it is reasonable to amend the notice. I find that in the circumstances it is reasonable to amend the date the Landlord signed the Notice to be June 3, 2016.

The Landlord and Tenant agree that the tenancy started on March 8, 2016 and rent in the amount of \$3,000.00 per month due is due the first day of the month. Based on this testimony, I calculate that on June 3, 2016, the Tenant was required to have paid the Landlord \$11,225.71 in rent. The amount of \$11,225.71 includes the prorated rent in the amount of \$2,225.71 for the month of March 2016, but does not include storage fees, late fees, or the security deposit which was unpaid in any event.

Pursuant to section 90 of the Act, the 10 Day Notice was deemed received by the Tenant on the third day after it was posted on the Tenant's door. I find that the 10 Day Notice was deemed received by the Tenant on June 6, 2016.

The Tenant had 5 days from June 6, 2016, to pay the outstanding rent or dispute the 10 Day Notice. The outstanding rent was required to be paid in full by June 11, 2016.

The testimony and evidence of the Landlord indicates that the Tenant paid the Landlord a total amount of \$7,938.00 by June 7, 2016. I find that the Tenant did not pay the Landlord all the rent that owed by June 11, 2016. The Tenant still owed the Landlord the amount of \$3,287.71.

The Tenant did not dispute the 10 Day Notice.

As the Tenant did not pay all the rent or dispute the Notice and Pursuant to section 46(5) of the Act, I find that the Tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

With respect to the Landlord's monetary claim, I find that the Tenant has paid the Landlord the total amount of \$8,498.00 during the tenancy. The Landlord has established that he was entitled to receive \$17,225.71 in rent from March 8, 2016, up to and including rent due on August 1, 2016. I allow the Landlord to include the claim for August 2016, rent. The Tenant knows she is responsible to pay the rent when it is due and the Landlord has suffered a loss of rent for August 2016. I find that the Tenant owes the Landlord the amount of \$8,727.71 for unpaid rent.

The Landlord's claim for late fees and storage locker fees are dismissed with leave to reapply.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$8,827.71 comprised of \$8,727.71 in unpaid rent for the above mentioned dates and the \$100.00 fee paid by the Landlord for this hearing. I grant the Landlord a monetary order in the amount of \$8,827.71. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant failed to pay the rent owing within five days of receiving the 10 Day Notice and did not file to dispute the 10 Day Notice. The Tenant is conclusively presumed under the law to have accepted that the tenancy ended on the effective date of the Notice. The tenancy is over.

The Landlord is granted an order of possession effective two days after service on the Tenant, and I grant the Landlord a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$8,827.71.

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: August 05, 2016

Residential Tenancy Branch