



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55; and
- a monetary order for unpaid rent, pursuant to section 67.

The landlord's two agents, PS and RT (collectively "landlord") and the tenant and her agent, RB attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord's two agents confirmed that they had authority to speak on behalf of the landlord named in this application, at this hearing. The tenant confirmed that her agent had authority to speak on her behalf at this hearing.

This hearing lasted approximately 44 minutes in order to allow both parties to fully present their submissions, negotiate a settlement of a portion of the application and due to repeated interruptions by the tenant and her agent during the hearing.

Preliminary Issue – Previous Hearings and Service of Documents

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing ("direct request hearing"). An interim decision, dated May 19, 2016 ("interim decision"), was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to a participatory hearing scheduled for June 20, 2016. By way of the interim decision, the landlord was required to serve the interim decision, notice of reconvened hearing and application package on the tenant.

A participatory hearing was held by a different Arbitrator on June 20, 2016 and a decision was issued on the same date ("previous hearing" and "previous decision"). Only the landlord's agent attended the previous hearing, not the tenant. The tenant applied for a review of the previous decision because she was unable to attend the hearing, stating that she was not properly served with the landlord's application.

A new review hearing was granted by a different Arbitrator, pursuant to a review consideration decision, dated June 27, 2016. By way of the review consideration decision, the tenant was required to serve the landlord with a copy of the review consideration decision and the notice of review hearing.

The tenant confirmed that she submitted all documents to the landlord, including written evidence, but she could not recall the exact date of service of the written evidence. The landlord confirmed receipt of all documents, except for the tenant's written evidence. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the review consideration decision and notice of review hearing. I advised both parties that I could not consider the tenant's written evidence, which consists of rent receipts written by the tenant, at this hearing or in my decision because the tenant did not provide an exact date of service as required by the *Act* and the Residential Tenancy Branch ("RTB") *Rules of Procedure*.

The tenant confirmed receipt of the landlord's application for dispute resolution package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application.

Preliminary Issue – Inappropriate Behaviour by the Tenant and her Agents during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

At the outset of the hearing, I advised both parties that one person was to speak at any given time, that parties were not to interrupt while others were speaking, and that both

parties would be given a chance to speak. Throughout the hearing, the tenant and her agent repeatedly interrupted the landlord's agents and me. I provided the tenant and her agent with ample time during the hearing to get their paperwork and affairs in order, as they were not prepared for the hearing and could not locate service dates.

The tenant and her agent displayed disrespectful and inappropriate behaviour throughout this hearing. I repeatedly warned the tenant and her agent to stop their inappropriate behaviour but they continued. However, I allowed the tenant and her agent to attend the full hearing, despite their inappropriate behaviour, in order to provide them with an opportunity to respond to the landlord's application and negotiate a partial settlement.

At the outset of the hearing, I asked the tenant whether any other people were in the same room with her and she advised me that there were not, except for her one male agent. Near the end of the hearing, I recognized an unfamiliar female voice coming from the end of the tenant's telephone line, which was on speakerphone. I inquired about this and a female answered, stating that she was the tenant's advocate and she had joined the conference during the course of the hearing but there was no proper "opportunity" to advise me of same. I advised the advocate, the tenant and her agent, that this was not appropriate and that I was to be advised if any other people joined the conference, since I had asked the specific question to the tenant at the outset of the hearing. I advised the tenant and her agent that any other participants, if they were witnesses, were not allowed to hear or participate in the proceedings while they were ongoing. I also advised the tenant and her agent that the advocate had attempted to participate in the conference by making comments that I could hear in the background of the conference.

I caution the tenant, her agent and advocate not to engage in the same behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and they may be excluded from future hearings.

Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim to include rent from May to August 2016. I find that the tenant is aware that rent is due as per her tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required her to vacate earlier. Therefore, the tenant knew or should have known that by failing to pay her rent, the landlord would pursue all unpaid rent at this hearing. The tenant also testified about

May to August 2016 unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claims for increased rent.

Background and Evidence

Both parties agreed to the following facts. This month-to-month tenancy began on July 1, 2015. Monthly rent in the amount of \$800.00 is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant and the landlord continues to retain this deposit. Both parties signed a copy of the written tenancy agreement, which was provided for this hearing. The tenant continues to reside in the rental unit and her agent also lives there as a tenant.

The landlord seeks an order of possession for unpaid rent, based on a 10 Day Notice to End Tenancy for Unpaid Rent, dated April 3, 2016 ("10 Day Notice"). The landlord also seeks to recover unpaid rent of \$800.00 for each month from April to August 2016, totalling \$4,000.00. The tenant agreed that she did not pay rent from May to August 2016, totalling \$3,200.00 to the landlord, stating that the landlord refused her rent. The tenant said that she paid rent of \$800.00 to the landlord for April 2016 and she had video evidence to prove same, but she did not know how to submit the video for this hearing. The landlord denied refusing any rent from the tenant.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Analysis

Settlement of End of Tenancy Issue

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of a portion of their dispute. Both parties agreed to the following final and binding settlement of a portion of their application:

1. Both parties agreed that this tenancy will end by 5:00 p.m. on August 31, 2016, by which time the tenant and any other occupants will have vacated the rental unit.

Decision regarding Landlord's Monetary Claim

Pursuant to section 67 of the *Act*, I award the landlord \$4,000.00 total in unpaid rent from April to August 2016. The tenant agreed that rent of \$3,200.00 was not paid to the landlord from May to August 2016. The tenant failed to provide proof that she paid rent of \$800.00 to the landlord for April 2016, as she did not submit video evidence, that she said she had in her possession. During the hearing, the advocate advised me that she was helping the tenant with her claim and the tenant previously had a legal advocate assisting, and therefore, the tenant could have obtained assistance from both of these advocates in submitting the video as evidence for this hearing. I find that the landlord cannot provide documentary proof that the tenant failed to pay rent.

The landlord continues to hold the tenant's security deposit of \$400.00. Although the landlord did not apply to retain this deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$400.00 in partial satisfaction of the monetary award.

Conclusion

This review hearing decision and orders replace the previous hearing decision and orders from June 20, 2016.

The previous hearing monetary order of \$2,400.00 and the order of possession, both dated June 20, 2016, issued to the landlord against the tenant, are both cancelled and of no force or effect.

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 5:00 p.m. on August 31, 2016. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 5:00 p.m. on August 31, 2016. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain the tenant's entire security deposit of \$400.00 in partial satisfaction of the monetary award.

I issue a monetary Order in the landlord's favour in the amount of \$3,600.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 09, 2016

Residential Tenancy Branch

