



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OPR MNR MNDC MNSD LRE RP ERP FF

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for:

- an Order of Possession for Unpaid Rent/Utilities pursuant to section 55;
- a monetary order for unpaid rent/utilities pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to section 46 ("10 Day Notice"); a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement for the cost of emergency repairs pursuant to section 67; authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; an order to the landlord to make repairs to the rental unit pursuant to section 33; an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend although the 9:30 am teleconference continued until 9:46 am. The landlord attended this hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities was served to the tenant on June 30, 2016. Landlord gave sworn testimony that she personally served the tenant with the 10 Notice to End Tenancy with an effective date of July 14, 2016. I accept that the tenant was duly served with the 10 Day Notice and I note that the tenant filed an application in response to that notice. I also accept the landlord's testimony and supporting documentation (Canada Post receipt and tracking information) to show that she served the tenant with

the landlords' Application for Dispute Resolution ("ADR") personally on July 21, 2016 and again by registered mail on July 22, 2016. The materials provided by the landlord show that the tenant refused to accept the landlord's ADR package via mail.

With respect to the tenant's failure to attend this hearing, Rule 10.1 of the Rules of Procedure provides as follows:

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenant's participation in this hearing to support her application and given the evidence provided at this hearing, **I order the tenant's application dismissed without liberty to reapply.**

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession and monetary order for unpaid utilities? Are the landlords entitled to retain the tenant's security deposit towards a monetary order? Are the landlords entitled to recover the filing fee?

Background and Evidence

The landlord testified that this tenancy began on June 1, 2015 as a 6 month fixed term tenancy. After November 30, 2015, the tenancy continued on a month to month basis. The landlord testified that the tenant continues to reside in the rental unit although she has not paid the \$775.00 rental amount for the months of August 2016 or September 2016. The landlords served the tenant with a 10 Day Notice to End Tenancy to be effective July 14, 2016 as a result of the tenant's ongoing failure to pay her portion of the utilities bills.

The landlords submitted a copy of a residential tenancy agreement signed by the tenant and landlords. The agreement includes a provision that the tenant is responsible for 40% of the utility bills at the residential premises. The landlord testified that the tenant resides in the lower unit of the home – a 2 bedroom suite. The landlord testified that the tenant has not paid utility bills in accordance with the tenancy agreement since 2015. The landlords provided a copy of a letter to the tenant from January 2016 requesting that the tenant pay her portion of the utility bills. Ultimately, the landlords provided the 10 Day Notice with an outstanding utilities amount of \$323.43. The landlords submitted utility bills for this hearing totalling an outstanding amount of \$874.35 by the tenant.

Analysis

Based on all of the undisputed testimony and supporting documentary evidence provided, I find the landlords have shown on a balance of probabilities that the tenant has failed to pay the utility bills as required by the residential tenancy agreement. I also accept the landlord's testimony that the tenant has not paid rent for August and September 2016 but continues to remain and reside in the rental unit.

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The tenant made an application to dispute the landlord's notice to end tenancy. The tenant did not attend to support her application. I find that the landlord provided sufficient evidence to justify the 10 Day Notice to End Tenancy. As I have dismissed the tenant's application, **I find the landlord is, pursuant to section 55(1), entitled to an Order of Possession.**

Based on the undisputed testimony of the landlord, I find that the landlord is entitled to a monetary order as follows,

| Item | Amount |
|---|------------------|
| Unpaid Utilities as provided in bills by landlord | \$874.35 |
| Unpaid Rent \$775 x 2 months (Aug, Sept 2016) | 1550.00 |
| Less Security Deposit | -775.00 |
| Recovery of Filing Fee for this Application | 100.00 |
| Total Monetary Order | \$1749.35 |

Conclusion

I dismiss the tenant's application in its entirety.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue the landlords a monetary order in the amount of \$1749.35.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: September 12, 2016

Residential Tenancy Branch