



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT (2001) LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“*Act*”), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

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

The tenant did not attend this hearing, which lasted approximately 10 minutes. The landlord owner of the rental unit, TT and the landlord’s agent, SP (collectively “landlord”) 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 owner confirmed that he hired the landlord company named in this application to manage this rental unit and that his agent had authority to speak on his behalf at this hearing.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. An “interim decision,” dated August 18, 2016, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

By way of the interim decision, the landlord was required to serve the interim decision, notice of reconvened hearing and application package to the tenant. The landlord testified that the tenant was served with the above documents on August 24, 2016, by way of registered mail to the rental unit where the tenant is residing. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord’s Application on August 29, 2016, five days after its registered mailing. The landlord testified that the tenant was served with the landlord’s original application for dispute resolution by direct request on August 12, 2016, by way of registered mail to

the rental unit where the tenant is residing. The landlord provided a Canada Post receipt and tracking number with the application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's original application on August 17, 2016, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 2, 2016, ("10 Day Notice") by way of posting to the tenant's rental unit door. The landlord provided a signed, witnessed proof of service with the application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on August 5, 2016, three days after its posting.

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 August to October 2016 rent, totalling \$2,100.00. I find that the tenant is aware that rent is due as per his tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his rent, the landlord would pursue all 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, despite the fact that he did not attend this hearing.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

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

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on March 1, 2013. Monthly rent in the amount of \$700.00 is payable on the first day of each month. A security deposit of \$350.00 was paid by the tenant and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement and a copy was provided for this hearing. The tenant continues to reside in the rental unit. The landlord issued the 10 Day Notice, which has an effective move-out date of August 15, 2016, indicating that rent in the amount of \$1,400.00 was due on July 1, 2016. The landlord provided a copy of the notice. The landlord explained that the tenant owed rent

for June and July 2016, totalling \$1,400.00 for the 10 Day Notice. The landlord confirmed that no rent payments were made by the tenant from June to October 2016, totalling \$3,500.00.

The landlord seeks an order of possession based on the 10 Day Notice and a monetary order of \$3,500.00 for unpaid rent from June to October 2016.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on July 1, 2016, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on August 15, 2016, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by August 15, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant pursuant to section 55 of the *Act*, as the 10 Day Notice complies with section 52 of the *Act*.

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$700.00 for each month from June to October 2016, inclusive. Therefore, I find that the landlord is entitled to \$3,500.00 in rental arrears from the tenant.

The landlord continues to hold the tenant's security deposit of \$350.00. Although the landlord did not apply to retain the deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$350.00 in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or anyone on the premises 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 \$350.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$3,150.00 against the tenant. The tenant must be served with this Order as soon as possible. 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: October 14, 2016

Residential Tenancy Branch