



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

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

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to ask questions pertaining to the landlord's application.

The tenant confirmed that the landlord's husband handed her the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on August 8, 2016. I am satisfied that the tenant was served with this document on that date in accordance with section 88 of the *Act*.

The landlord's original application for dispute resolution was served to the tenant by way of the Residential Tenancy Branch's direct request process. The landlord's application was adjourned to a participatory hearing in an Interim Decision of Adjudicator J. Doyon on August 29, 2016. She adjourned the application because she was not satisfied that the landlord had demonstrated to the extent required under the direct request process that the tenant had been handed the 10 Day Notice on August 8, as claimed by the landlord in her application.

In her Interim Decision, Adjudicator Doyon attached Notices of Reconvened Hearing, for a hearing scheduled for October 21, 2016 at 11 am. She directed the landlord, as applicant, to serve the tenant with the Notice of Hearing.

Although the tenant had received the Interim Decision from the Branch, the tenant maintained that she had only been served with the Notice of the October 21, 2016 hearing on October 20. On October 21, an administrative error by the Branch prompted

me to call the parties and ask whether they would be available for a reconvened hearing on October 24 at 9 am. Both parties agreed to this rescheduling. The tenant noted that this would give her more time to review the landlord's application and prepare for this hearing. Based on the above information and in accordance with section 71(2)(c) of the Act, I am satisfied that the parties were sufficiently served notice of this hearing, even though the tenant did not receive notice of the October 21 hearing from the landlord in accordance with the direction issued by the Adjudicator in her Interim Decision.

At the hearing, the landlord's spouse gave undisputed sworn testimony that the updated amount of unpaid rent owing at this time had increased from the \$2,075.00 identified in the original application to \$5,575.00. This amount reflects the tenant's failure to pay a total of \$3,500.00 in rent owing for September and October 2016. Under these circumstances, I allowed the landlord to revise the amount of the requested monetary award in her application from \$2,075.00 to \$5,575.00.

Issues(s) 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

This one-year fixed term tenancy began on April 1, 2016. Monthly rent is set at \$1,750.00, payable in advance on the first of each month. Although the written Residential Tenancy Agreement signed by both parties and entered into written evidence by the landlord called for the tenant's payment of an \$850.00 security deposit, both parties agreed that no such payment has been made by the tenant.

At the hearing, the landlord's spouse gave undisputed sworn testimony that in addition to the \$2,075.00 in unpaid rent owing at the time of the issuance of the 10 Day Notice, the tenant has failed to pay an additional \$3,500.00 in rent owing for September and October 2016. The tenant said that she believed that the amount identified as owing by the landlord and her spouse was correct.

Analysis

In the landlord's 10 Day Notice, the landlord incorrectly included the unpaid \$850.00 security deposit as part of the \$2,950.00 total identified as owing at that time. Despite this error, I find that there is undisputed sworn testimony and written evidence that the tenant failed to pay the \$2,075.00 in unpaid rent owing at the time of the issuance of the 10 Day Notice in full within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the Act, the tenant's failure to take

either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by August 18, 2016. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I also find that there is undisputed evidence that \$5,575.00 in unpaid rent remains owing for this tenancy. I issue a monetary award in the landlord's favour in that amount.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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 issue a monetary Order in the landlord's favour in the amount of \$5,575.00, the undisputed amount of unpaid rent identified as owing as of the date of this hearing. 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 subsection 9.1(1) of the *Act*.

Dated: October 24, 2016

Residential Tenancy Branch