



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This participatory hearing was convened after the issuance of a December 19, 2016 Interim Decision of Adjudicator J. Doyon. Adjudicator Doyon determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlord. She reconvened the landlord's application for the following to a participatory hearing:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities; and
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent.

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter.

The landlord's agent, LV, (the "landlord") attended the hearing, while the tenant did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was posted on the front door of the rental unit on November 3, 2016. Pursuant to sections 88 and 90 of the *Act*, I find that the tenant was served with this 10 Day Notice on November 6, 2016.

On December 13, 2016, the tenant was served with a Notice of Direct Request Proceedings by way of Registered Mail. The Canada Post tracking number was provided to the hearing as part of the landlord's evidentiary package. Pursuant to sections 88 and 90 of the *Act*, the tenant was served on December 18, 2016, with the Notice of Direct Request Proceedings.

The landlord testified that the tenant was mailed a copy of the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package") ,including

notice of this participatory hearing, by Registered Mail on December 28, 2016. The Canada Post tracking number was provided to the hearing as part of the landlord's evidentiary package. Pursuant to sections 89 and 90 of the *Act*, I find that the tenant was deemed served on January 2, 2017.

The landlord testified that she spoke with the tenant on January 16, 2017, whereby the tenant confirmed receipt of this package and knowledge of the hearing on January 20, 2017.

In accordance with section 88 and 89 of the *Act*, I find that the tenant was correctly served with both the 10 Day Notice and the dispute resolution hearing package.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The tenancy in question began on July 1, 2013. This was a month to month tenancy, rent was set at \$880.00 per month and a security deposit of \$440.00 continues to be held by the landlord.

The landlord gave testimony that her application for Direct Request was reconvened to a participatory hearing because the corporate landlord's name attached to the Direct Request Worksheet differed from the name on the residential tenancy agreement. The landlord explained that the name of the corporate landlord had changed after the tenancy agreement had been entered into. As part of her evidentiary package, the landlord provided a letter from the Area Property Manager attesting to this.

The landlord has applied for an Order of Possession and a Monetary Order \$1,293.00 for unpaid partial rent for the months of October, November, December 2016 and January 2017. The landlord testified that the tenant has consistently paid some rent every month, and receipts were issued, however; the receipts issued were for *use and occupancy only*. The landlord stated that \$836.00 remains owing for the months listed above. This amount includes \$100.00 in late fees that were applied to outstanding rent as agreed to by the tenant in the residential tenancy agreement signed between the parties on May 13, 2013.

The landlord said that she is currently seeking a Monetary Order of \$836.00 to recover monies owed for partial non-payment of rent for these months. Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to decrease the monetary claim \$1,293.00 to \$836.00, to reflect this lower amount of unpaid rent

Analysis – Order of Possession

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made an 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 has 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 November 16, 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.

Analysis – Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove their entitlement to their claim for a monetary award.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a Monetary Order of \$836.00 for unpaid rent. The landlord testified that rent has not been paid in its entirety for October, November, December 2016, and January 2017. Additionally, the landlord sought to collect late-fees on the rent of \$25.00 per month. The landlord noted section 6 of the tenancy agreement entered into between the landlord and tenant that was provided as evidence during the hearing. This clause, signed by the tenant, acknowledges that late fees will apply to arrears related to rental payments. As such, I will allow the landlord to apply this amount to the Monetary Order.

Although the landlord's application does not seek to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to

retain the tenant's \$440.00 security deposit plus applicable interest in partial satisfaction of the Monetary Award. No interest is payable over this period.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I make a Monetary Order of \$396.00 in favour of the landlord as follows:

Item	Amount
Rental Arrears	\$836.00
Less Security Deposit	(-440.00)
Total Monetary Order	\$396.00

The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: January 23, 2017

Residential Tenancy Branch