



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DELANEY PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

Introduction

On January 24, 2017 the corporate Landlord made an Application for Dispute Resolution by Direct Request (the “Application”) requesting an Order of Possession for unpaid rent. This process involves a non-participatory hearing in which findings are made on an undisputed notice to end tenancy for unpaid rent and specific documentary evidence a landlord is required to submit with the Application.

The Application was considered by an Adjudicator on January 26, 2017. In an Interim Decision rendered on the same day, the Adjudicator found the Landlord had correctly served the Tenant with the Application. However, the Adjudicator found the Landlord failed to provide sufficient evidence of the person who the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “10 Day Notice”) was served to and whether she was an adult. Therefore, the Application was adjourned to reconvene in this participatory hearing to determine these matters and decide the Application.

The Landlord, who was the agent and owner of the corporate Landlord named on the Application, appeared for the hearing and provided affirmed testimony. However, there was no appearance by the Tenant during the 13 minute hearing or any submission of evidence from the Tenant prior to the hearing.

The Landlord testified that she had personally served the Notice of Hearing documents for this hearing to the Tenant on January 27, 2016. Based on the undisputed evidence before me, I find the Landlord affected service to the Tenant for this hearing pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the “Act”). As a result, the hearing continued in the absence of the Tenant.

During the hearing, the Landlord requested to amend the Application to: recover the filing fee; to keep the Tenant’s security deposit; and claim unpaid rent for three months of outstanding rent. I noted that although the Landlord had not applied for a Monetary

Order for unpaid rent, the Landlord had submitted with the Application a Monetary Order worksheet showing the Tenant was in rental arrears for December 2016 and January 2017.

As the Tenant would have been aware that the rent for these months was unpaid, I granted the Landlord's requests and amended the Landlord's Application pursuant to my authority under Section 64(3) (c) of the Act and Rule 4.2 of the Dispute Resolution Rules of Procedure.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started on October 1, 2014 on a month to month basis. The Tenant paid the Landlord a security deposit of \$495.00 at the start of the tenancy which the Landlord still retains. Pursuant to the tenancy agreement the rent started at \$990.00 and was increased during the tenancy to the current amount of \$1,010.00. This is payable on the first day of each month.

The Landlord testified that the Tenant failed to pay rent for December 2016 and January 2017. As a result, the Landlord attended the Tenant's rental unit on January 10, 2017 and served a woman residing at the rental unit with the Tenant with the 10 Day Notice.

The Landlord provided a Proof of Service document signed by a witness who verified this method of service. The 10 Day Notice was provided into evidence and shows a vacancy date of January 23, 2017 due to \$2,020.00 in unpaid rent that was due on January 1, 2016. The Landlord testified that the woman who was served with the 10 Day Notice was an adult.

The Landlord testified that in addition, the Tenant has failed to pay rent for February 2017. Therefore she now seeks an Order of Possession to end the tenancy and a Monetary Order for the amount of \$3,030.00.

Analysis

I have carefully considered the undisputed affirmed testimony and the documentary evidence before me in this Decision as follows. Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a 10 Day Notice, a tenant must pay the overdue rent or make an Application to dispute the 10 day Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the 10 Day Notice and must vacate the rental unit on the vacancy date.

Having examined the 10 Day Notice provided into evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the undisputed oral and witness evidence before me that the 10 Day Notice was served to an adult apparent living with the Tenant in accordance with Section 88(e) of the Act on January 10, 2017.

Therefore, the Tenant would have had until January 15, 2017 to either pay the outstanding rent on the 10 Day Notice or make an application to dispute it. There is no evidence before me that the Tenant did either.

As a result, I find the Tenant is conclusively presumed to have accepted the tenancy ended. Therefore, the Tenant would have had to vacate the rental unit on January 23, 2017 pursuant to the vacancy date on the 10 Day Notice.

As this date has now passed and the Tenant is still residing in the rental unit without paying rent, the Landlord is granted a two day Order of Possession. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

In relation to the Landlord's monetary claim for unpaid rent, I accept the Landlord's undisputed oral and written evidence that the Tenant failed to pay rent for December 2016, and for January and February 2017. Accordingly I award the Landlord \$3,030.00 in unpaid rent.

As the Landlord has been successful in this claim, I also award the \$100.00 Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$3,130.00. As the Landlord holds the Tenant's security deposit of \$495.00, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the remaining balance of \$2,635.00. This order must be served on the Tenant and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Tenant fails to make payment. Copies of both orders for service and enforcement are attached to the Landlord's copy of this Decision.

Conclusion

The Tenant has breached the Act by failing to pay rent. Therefore, the Landlord is granted a two day Order of Possession. The Landlord is allowed to keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of \$2,635.00. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 23, 2017

Residential Tenancy Branch