



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes

OPR, MNR

Introduction

This Review Hearing was convened by way of conference call in response to the tenant's application for a review of the landlord's application for an Order of Possession for unpaid rent or utilities and for a Monetary Order for unpaid rent or utilities. The landlord had applied through the Direct Request Process and was issued an Order of Possession and a Monetary Order at the proceeding held on October 18, 2016. The tenant applied for a review of that Decision and Orders and the matter was dealt with on November 04, 2016. The tenant's application for a Review Consideration was upheld. The Adjudicator's Decision, Order of Possession and Monetary Order, all dated October 18, 2016, were suspended pending the outcome of this Review Hearing.

This Review Hearing original commenced on December 21, 2016 and was reconvened as the landlord had not complied with the Adjudicators order to serve the original hearing documents to the tenant. The hearing was reconvened on January 27, 2017 to hear the landlord's original application for an Order of Possession and a Monetary Order for unpaid rent for utilities. The hearing was again adjourned as more time was required to hear evidence and an Interim Decision was provided to both parties. The hearing was reconvened on February 01, 2017. The parties were permitted to provide additional evidence as directed in second Interim Decision.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed that their names documented on the landlord's application are their legal names. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Should the original decision and orders be confirmed, varied or set aside?

Background and Evidence

The parties agreed at the hearing held on December 21, 2016 that this tenancy started on October 01, 2016 for a fixed term tenancy that is due to end on September 30, 2017. Rent for this unit is \$3,100.00 per month due on the 1st of each month. The landlord testified that the rent for November and December was temporarily reduced to \$2,850.00 as the tenant had a temporary loss of her parking facilities which were reinstated on January 01, 2017. The tenant paid a security deposit of \$1,550.00 on September 24, 2016.

At the hearing held on January 27, 2017, both parties were warned several times to be respectful during the proceedings and not to interrupt the other party when they gave evidence. The tenant remained disrespectful and argumentative throughout the proceedings. The parties were warned again in the interim decision that at the reconvened hearing they should be respectful.

At the re-reconvened hearing held on February 10, 2017 the tenant appeared with a friend acting as her advocate and support person. No full name was provided for this advocate. The tenant immediately asked for the hearing to be adjourned. The tenant testified that she had suffered a stroke, had fallen and had concussion. The tenant testified that she was unable to work until February 17, 2017. The tenant's speech was slightly blurred at this stage. The tenant's advocate when asked said she was a legal advocate but later stated she misunderstood and was not a legal advocate but was just a friend of the tenants who was attending to support her.

The landlord objected to the hearing being adjourned again and testified that this was a further delaying tactic by the tenant. I asked the tenant to provide some documentary evidence to show the reason why she could not attend the hearing today as she had had a week to provide this

evidence seeking an adjournment and had not done so. The tenant became angry at this point. The tenant testified that her advocate had her doctor's letter. I asked the tenant's advocate to read the contents of the letter so I could determine if the hearing could be adjourned for medical reasons. The tenant's advocate stated that the letter from the tenant's doctor said the tenant could not work until February 17, 2017. The tenant became extremely aggravated and angry at this point and forbade her advocate to read out anymore of the letter. The tenant's speech improved at this point and became fluent and no longer blurred. I asked the tenant to fax the letter to me before we could proceed with the hearing to determine if an adjournment could be made. The tenant became very angry and started to shout at me that she had had a stroke because of me after the last hearing. The tenant said she was denied a fair opportunity to be heard. The tenant said she was going to hang up. I explained to the tenant that the hearing was reconvened twice to give the parties fair opportunity to be heard and if the tenant wanted to disconnect from the hearing that the hearing would continue in the tenant's absence. The tenant and her advocate left the hearing at 9.15 a.m. The hearing continued in the tenant's absence.

The landlord testified that at the start of the tenancy the tenant had provided a PAD form for rent payments to be taken from the tenant's bank account. The landlord presented this form at her bank and was informed this form was for corporation use and not personal banking. The landlord's bank gave them the correct form for non-business use. The landlord's bank contacted the tenant's banker to say they had problems setting up the direct deposit using that original form and the tenant was informed of this on September 25, 2016. The landlord suggested other ways for the tenant to pay rent such as e-transfer, certified cheque or to leave cheques with the concierge of the building. The landlord referred to the letter from her bank that states on September 25, 2016 the landlord tried to implement the PAD but that it was unacceptable and only for use on a business account.

No rent was received on October 01, 2016. The landlord issued the tenant with a 10 day Notice to End Tenancy on October 02, 2016. This Notice was served on the tenant's door and had an effective date of October 15, 2016.

The tenant sent three cheques to the landlord dated October 01, 2016, November 01, 2016 and December 01, 2016 cheque numbers 001, 002 and 004. On October 03 the tenant sent an email to the landlord saying she had spent two hours at RTB and if the landlord did not believe

the tenant had sent the cheque she would cancel cheque #001. Due to this the landlord did not deposit cheque 001. The tenant replaced this cheque with cheque #005. This cheque was received by the landlord on October 06, 2016; however, the cheque was dated October 10, 2016. The landlord deposited this cheque on October 11, 2016. The landlord was notified by her bank on October 20, 2016 that the payment had been stopped. As the tenant did not pay the rent for October within the five allowable days because the cheque was stopped by the tenant then the landlord seeks to have the original Order of Possession issued on October 18, 2016 reinstated and confirmed.

The landlord testified that the cheques provided by the tenant for the rent for November and December, 2016 were either stopped or there were insufficient funds. The landlord refers to their documentary evidence to support this. On December 17, 2016 the landlord received a postal money order from a third party with the tenant's name on it for \$999.99. This was cashed on December 23, 2016 and has been applied to the outstanding rent.

The landlord seeks to amend her application to recover unpaid rent for January and February 2017 as no further rent payments have been made by the tenant. The landlord seeks to recover the following amounts:

October, 2016	\$3,100.00
November, 2016	\$2,850.00
December, 2016	\$2,850.00
January, 2017	\$3,100.00
February, 2017	\$3,100.00
Subtotal	\$15,000.00
Rent received	(\$999.99)
Total rent owed to date	\$14,000.01

The landlord has amended their application to include costs to send documents to the tenant by registered mail (\$79.28); for time and charges to prepare and attend hearings (9,200.00); for travel expenses to attend to hearing matters (\$2,000.00); for filing fees for previous hearings (\$200.00).

At the hearing the tenant attended on January 27, 2017, the tenant testified that she had initially asked the landlord if she would accept a PAD form for rent to be paid by direct deposit. The landlord agreed and the tenant's bank issued this form and a security deposit payment. The tenant asked the landlord to confirm with her bank as she did not need to be a business to use the PAD form provided. The tenant disputed that she was informed the landlord could not use the PAD form provided and the landlord did not return that form to the tenant.

The tenant testified that her bank called her and said something was going on and that the landlord's bank could use the PAD form. 15 minutes later the tenant's move was stopped. The tenant spoke to her bank and was told that a 3rd party went into her bank and asked for information about her as they were trying to initiate a transfer from her account to automatically transfer money. The tenant testified that the landlord's agent was dealing with the bank yet the PAD was in the landlord's name. The landlord sent an email to the tenant's bank saying they would kick the tenant out. The bank responded and said they could not get the money until October 01, 2016. The landlord put the 10 Day Notice on the tenants door.

The tenant testified that she sent a cheque on October 01, 2016 (001) and was waiting for the landlord to return the PAD form. The landlord said by phone that she never received it. It was sent by registered mail. The tenant felt she could not trust the landlord so went to the RTB and was advised to issue the landlord with a new cheque (005). The tenant put a stop on cheque #001. Cheque 005 was dated for October 10, 2016 as the tenant did not stop cheque 001 until October 10, 2016.

The tenant testified that on October 05, 2016 she sent a letter to the landlord about 3rd parties trying to cash her cheques and that they have to go through the landlord's account. The tenant testified that she was nervous about this so filed an application for Dispute Resolution. The landlord became angry so her agent filed an application for a Direct Request Proceeding. No one attempted to cash the rent cheques before filing for a Direct Request Proceeding.

The tenant raised some issues with the landlord's documentary evidence in the form of letters from the landlord's bank which do not have bank heading on, signature carriage, or the address or person's position. The tenant testified that the landlord sent evidence to the tenant that said her cheque 004 was NSF for insufficient funds. The tenant testified she got a letter from her

bank that said 004 was a stop payment and not insufficient funds. The tenant testified that she had put a stop payment on this cheque and all the other cheques written to the landlord because a 3rd party was trying to cash them.

The tenant disputed the landlord's application for an Order of Possession and testified that she did pay October's rent within the five allowable days. It was only stopped because the landlord tried to get someone else to cash the cheque. The tenant testified that she put a stop payment on cheque 005 on October 20, 2016 because she received an Order of Possession from the landlord after the Direct Request Proceeding held on October 18, 2016.

The tenant testified she issued another cheque 006 dated October 21, 2016 and this was sent to the landlord by registered mail from the tenant's advocacy office. The tenant agreed she does not have evidence of this being issued or sent. The tenant accused the landlord of forging bank documents.

The tenant agreed that the amount of \$999.99 was hand delivered to the landlord from a third party related to the tenant's cancer fund raising. The tenant testified that three other money orders were hand delivered to a USP store and sent to the landlord.

The landlord disputed that this money order was hand delivered and testified it was sent by registered mail. The landlord testified that no other money orders have been received from the tenant or any other person related to the tenant.

The tenant did not provide any further testimony or evidence concerning the landlord's application as she did not stay in the reconvened hearing which continued for 52 minutes.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

I refer the parties to s 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the tenant did send three rent cheques to the landlord one of which was for October's rent; however, the tenant agreed she put a stop payment on that rent cheque 001 and notified the landlord that she had done so. I am satisfied with the evidence before me that the tenant was served a 10 Day Notice to End Tenancy on October 02, 2016 when no further rent payment for October was received to replace the rent cheque by October 02, 2016. Irrespective of the PAD form provided to the landlord for the rent payment to be taken out of the tenant's bank, I find the landlord has sufficient evidence to show that their bank would not accept this PAD form and that the tenant was notified of this and provided with other methods in which she could pay her rent.

After the 10 Day Notice was deemed served by the tenant on October 05, 2016 the tenant was required to pay the outstanding rent within five days of this date. I accept the tenant did send the landlord a rent cheque # 005 which was received by the landlord on October 06, 2016; however, this was dated for October 10, 2016 and although this was the fifth day after being deemed served the 10 Day Notice the tenant went on to stop that rent cheque at her bank.

Consequently, I must find that the tenant did not pay the rent as the landlord could not cash a cheque that had been stopped by the tenant. I further find that by the tenant's own admission all further rent cheques were also stopped and there is insufficient evidence to show that any further cheques were provided to the landlord by the tenant.

It is undisputed that the tenant or a person for the tenant did send the landlord \$999.99 on December 17, 2016. This has therefore been applied to the rent for October, 2016. The balance now owed for October is therefore **\$2,100.01**. As the tenant has insufficient evidence to show that the tenant or someone on her behalf sent three more money orders to the landlord I find the tenant failed to make any further rent payments to the landlord for November or December, 2016 and as the rent was reduced due to the parking space not being available to the tenant for these two months; I find the landlord has established a claim to recover rent for November and December, 2016 of **\$5,700.00**.

I have allowed the landlord to amend her application to recover unpaid rent for January and February, 2017 as the tenant has continued to reside in the rental unit and would be aware that rent is due on the first of each month. The landlord is therefore entitled to recover \$ **\$6,200.00** for January and February, 2017. Consequently, I have varied the original Monetary Order issued to the landlord on October 18, 2016 and a new Monetary Order has been issued for rent arrears for the amount of **\$14,000.01**.

With regard to the remainder of the landlord's amended monetary claim; the landlord has applied to recover costs associated with sending documents to the tenant by registered mail; for time and charges to prepare and attend hearings; for travel expenses to attend to hearing matters; and for filing fees for previous hearings to a total amount of \$11,479.28. As explained to the landlord at the hearing there is no provision under the Act for me to award costs to send documents by registered mail; for the landlord's time to prepare and attend hearings; for any travel expenses to attend to hearing matters or for filing fees paid for different hearings or proceedings. This section of the landlord's claim is therefore dismissed. It must be noted here that the landlord has not applied to recover her filing fee for this application as it was original filed as a Direct Request Proceeding.

I have reviewed all documentary evidence and accept that the tenant has been served with the Notice to End Tenancy pursuant to section 88 of the *Act*. The Notice is deemed to have been received by the tenant on October 05, 2016. The Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor did the tenant apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and I confirm the original Order of Possession pursuant to section 55 and s. 82(3) of the *Act*.

I am not concerned about any allegations made by the tenant that the landlord provided fraudulent bank documents; I find the tenant's allegations are unconnected to the main issue of the hearing which was scheduled to deal with the unpaid rent and an Order of Possession due to unpaid rent. The tenant agreed she did stop the rent cheques with her bank and as the tenant

has an obligation to ensure rent is paid on the first day of each month then that is the underlying factor dealt with at this hearing.

I refer the parties to s. 79(1) and s. 79(7) of the *Act* which states:

79 (1) *A party to a dispute resolution proceeding may apply to the director for a review of the director's decision or order.*

79 (7) *A party to a dispute resolution proceeding may make an application under this section only once in respect of the proceedings.*

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a varied Monetary Order for \$14,000.01 pursuant to s. 67 and 82(3) of the *Act*. The Order must be served on the Respondent. Should the Respondent fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two (2) days** after service upon the tenant. This Order must be served on the Respondent. If the Respondent fails to comply with this Order, the Order may be filed in the Supreme Court of British Columbia 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: February 13, 2017

Residential Tenancy Branch