



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FA INVESTMENT HOLDINGS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF; CNR, O

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 12, 2017 ("10 Day Notice"), pursuant to section 46; and
- other unspecified remedies.

The individual landlord MA ("landlord") and the tenant 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 confirmed that he was the owner of the landlord company named in this application and that he had authority to represent it as an agent at this hearing (collectively "landlords").

This hearing lasted approximately 36 minutes. The hearing began at 9:30 a.m. The tenant disconnected from the conference at approximately 9:58 a.m., without any prior warning. The hearing concluded at 10:06 a.m. The tenant did not call back into the hearing after she disconnected from it. I continued the conference with the landlord in the tenant's absence for the above eight minutes, as I am authorized to do so under Rule 7.3 of the Residential Tenancy Branch *Rules of Procedure*. The majority of the testimony had been provided by both parties prior to the tenant disconnecting from the conference.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The landlord testified that the 10 Day Notice was served personally to the previous tenant CT ("previous tenant"), who both parties agreed vacated the rental unit on January 13, 2017. The 10 Day Notice was also posted to the tenant's rental unit door on January 12, 2017. In her application, the tenant confirmed receipt of the notice on January 13, 2017. The landlord provided a signed proof of service with a hand delivery receipt signed by the previous tenant

who personally received the notice, as well as a signed, witness statement confirming the posting to the door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 10 Day Notice on January 13, 2017, the date she acknowledged receiving it.

Preliminary Issue - Proper Tenant for this Tenancy

Both parties agreed to the following facts. The landlord purchased the rental unit in late October 2015. The previous tenant was the only tenant to sign the written tenancy agreement and his tenancy began on November 1, 2015, as per the tenancy agreement. The tenant moved into the rental unit in December 2015 but did not sign the written tenancy agreement. The tenant changed the locks to the rental unit after the previous tenant vacated.

The landlord stated that the tenant is not a proper "tenant" at this rental unit because she did not sign a written agreement with the landlord. The tenant submitted an altered copy of the original written tenancy agreement between the previous tenant and the landlord, whereby the tenant added her own name under the "tenant" details section, indicated a periodic tenancy beginning on October 3, 2015 as a "common law spouse," and signed the agreement after making some additional alterations. The landlord said that he did not agree to this, nor did he sign this altered copy. He said that only the previous tenant paid rent to him for this rental unit and the current tenant has not paid rent since the previous tenant vacated.

I find that the tenant is a proper "tenant" for this rental unit and tenancy. Although she did not sign a copy of the written tenancy agreement, she has been living in the rental unit since almost the inception of the tenancy with the previous tenant. She moved in one month after the previous tenant. Although she never paid rent directly to the landlord, it was only because the previous tenant handled those transactions. The landlord knew when the tenant moved in, accepted this fact and did not issue a notice to end tenancy for her unauthorized occupancy. He only issued the 10 Day Notice, when both tenants were still living at the unit in January 2017, when the rent was unpaid. Therefore, I find that the landlord accepted the tenant as a true "tenant" for this tenancy. The tenant's efforts to alter the original tenancy agreement to include her name, show that she viewed herself as a tenant at this rental unit. The tenant disputed the 10 Day Notice that is the subject of these applications, and agreed that she owed rental arrears to the landlord for this rental unit and tenancy. I found that I had jurisdiction to hear this matter and that this is a true tenancy between the parties.

Accordingly, this decision and resulting orders are enforceable against the tenant and she is bound by the obligations of a tenant under the *Act* with respect to this rental unit and this tenancy.

Issues to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed that monthly rent in the amount of \$1,200.00 is payable on the first day of each month and that no security deposit was paid to the landlords. The landlords issued the 10 Day Notice indicating that rent of \$2,400.00 was due on January 1, 2017. The landlord stated that this amount included rent of \$1,200.00 each for December 2016 and January 2017. The landlord said that rent was also unpaid for February and March 2017, in the amount of \$1,200.00 for each month.

The tenant initially agreed that rent was unpaid from December 2016 to March 2017, but then changed her testimony to state that she believed the previous tenant paid rent for December 2016 and January 2017 to the landlord. She claimed that the landlord manages the previous tenant's money and that he has access to the previous tenant's paystubs, while she did not have access. She said that she did not have documentary evidence to show payment for rent because she and the previous tenant are no longer together. The landlord denied the tenant's claims, stating that the previous tenant did not pay any rent for December 2016 or January 2017. He agreed that he provided assistance to the previous tenant regarding monetary debt problems but that he did not take any rent from the previous tenant or his employment wages. The tenant agreed that she did not pay any rent to the landlords for February or March 2017.

In the "details of the dispute" for the tenant's application, which was filed on January 17, 2017, the tenant stated "I offered to pay rent arrears and was refused and need more time to leave." When questioned as to why she would state this if rent was already paid for December 2016 and January 2017, the tenant did not have an explanation. When I notified the tenant that the basis of both parties' applications was the 10 Day Notice for rental arrears from December 2016 to January 2017, she stated that it was paid but she could not prove it.

The landlords seek a monetary order of \$4,800.00 for unpaid rent from December 2016 until March 2017, as well as recovery of the \$100.00 filing fee. The tenant seeks to cancel the landlords' 10 Day Notice.

Analysis

I find that the tenant failed to pay the full rent due on January 1, 2017, within five days of receiving the 10 Day Notice. The tenant made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. However, the tenant did not provide documentary evidence that the rent was paid in full. She said that the previous tenant paid the rent and the proof was in his pay stubs which were given to the landlord. Yet, she did not provide these pay stubs or indicate how employment pay stubs are proof that rent was paid. I accept the landlord's testimony that no rent was paid to him by the tenant for December 2016 or January 2017. I find that the tenant's admission in her application details for offering to pay rental arrears, confirms this.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent led to the end of this tenancy on January 23, 2017, 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 January 23, 2017. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*. The tenant's application to cancel the landlords' 10 Day Notice is dismissed without leave to reapply.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the landlords are entitled to a monetary order in the amount of \$3,600.00 for unpaid rent from the tenant, based on a rent of \$1,200.00 for each month from December 2016 to February 2017, inclusive.

The landlords' application for a monetary order for unpaid rent of \$1,200.00 for March 2017 is premature, since this hearing occurred on March 1, 2017, the day that rent was due, and the tenant had until 11:59 p.m. on March 1, 2017, to pay the rent. As I do not know whether the tenant paid the rent after the hearing, I dismiss this portion of the landlords' application with leave to reapply. The landlords must file a new application and pay a new filing fee in order to recover this amount if it is unpaid.

As the landlords were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the tenant.

The tenant did not provide any evidence with respect to her application for "other" unspecified remedies. Therefore, that application is dismissed without leave to reapply.

Conclusion

I grant an Order of Possession to the landlords effective **two (2) days after service 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 issue a monetary order in the landlords' favour in the amount of \$3,700.00 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.

The tenant's entire application is dismissed without leave to reapply.

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: March 10, 2017

Residential Tenancy Branch