



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PENTICTON & DISTRICT SOCIETY FOR COMMUNITY LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR (Landlord's application)
 CNR, DRI (Tenant's application)

Introduction

On March 14, 2017 the Landlord made an Application for Dispute Resolution by Direct Request requesting an Order of Possession and a Monetary Order for unpaid rent. This process involves a non-participatory hearing based on an undisputed notice to end tenancy for unpaid rent and documentary evidence.

The Application was before an Adjudicator on March 22, 2017. In a decision dated the same date the Adjudicator issued the Landlord with an Order of Possession and a Monetary Order. However, the March 22, 2017 Decision and orders were then corrected on March 28, 2017 because the Tenant had applied to dispute the notice to end tenancy within the time limit set by the Act and also applied to dispute an additional rent increase. Therefore, this rendered the orders dated March 22, 2017 invalid.

The corrected March 22, 2017 decision was changed to an Interim Decision dated March 28, 2017 which informed the parties that both applications would be determined in this participatory hearing. Both parties were informed of this participatory hearing by the Residential Tenancy Branch by phone and both parties were sent a copy of the Notice of Hearing documents which detailed the dial in codes for this hearing. The Interim Decision also required the Landlord to serve a copy of the Interim Decision and the Notice of Hearing documents for this hearing to the Tenant.

Two agents for the Landlord appeared for this hearing and provided affirmed testimony and referred to documentary evidence which had been provided with their application. However, there was no appearance by the Tenant during the 20 minute hearing despite the Tenant's application being scheduled to be heard at the same time in this hearing.

The Landlord's agents testified that the Tenant had been served the Notice of Hearing documents for this hearing by posting it to the Tenant's door on March 30, 2017. The Landlord provided a Proof of Service document which was signed by a witness verifying this method of service. The witness who signed this document was one of the agents

appearing for this hearing and she confirmed this method of service through her direct testimony.

I am satisfied that the Landlord served the Tenant with notice of this hearing and their application pursuant to Section 89(2) (d) of the Act. In addition, I am satisfied that the Tenant was aware of this hearing as he had been provided with notice of this hearing through the filing of his own application and by the Residential Tenancy Branch when the Tenant was contacted about this participatory hearing. As the Tenant failed to appear for this hearing and present the merits of his request to cancel the notice to end tenancy and explain his allegation regarding a rent increase imposed by the Landlord, I dismissed the Tenant's application without leave to re-apply.

As a result, the hearing continued in the absence of the Tenant to determine the Landlord's application. However, as the Landlord posted the Notice of Hearing documents and the Landlord's application to the Tenant's door, the Act only permits me to determine the Landlord's application for an Order of Possession. Therefore I dismiss the Landlord's monetary claim with leave to re-apply.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The Landlord's agents testified that this tenancy started on April 1, 2007 on a month to month basis. The rental unit is subsidized and the rent amount payable by the Tenant is linked to income. The Tenant's rent contribution started off at \$257.50 at the start of the tenancy and was increased and decreased during the tenancy. Currently, the Tenant's rent contribution is \$360.00 payable on the first day of each month. The Tenant paid the Landlord a security deposit of \$150.00 at the start of the tenancy which the Landlord still retains.

The Landlord's agents stated that at the start of 2017, the Tenant failed to provide the relevant documentation for his income and therefore, the Tenant's rent payable for this tenancy increased. However, the Tenant failed to pay the increased amount of rent and ended up in rental arrears for the amount of \$101.00. As the result, the Tenant was served with a notice to end tenancy for unpaid rent dated January 9, 2017. The Tenant disputed that notice to end tenancy and hearing took place on February 22, 2017 to hear that matter, the file number for which appears on the front page of this Decision.

The Landlord provided a copy of that decision into evidence. The decision states that during the hearing the parties reached a settlement agreement in which the Tenant acknowledged the rental arrears debt of \$101.00 and that he would pay this in \$20.00 installments starting March 1, 2017. The notice to end tenancy was cancelled and the tenancy was allowed to continue. The agreement also provided the Landlord with liberty to issue the Tenant with another notice to end tenancy if the Tenant failed to make any of the installment payments.

The Landlord's agent testified that on March 1, 2017 the Tenant paid his full rent but failed to pay the \$20.00 installment for the rental arrears outstanding pursuant to the February 22, 2017 agreement. As a result, the Tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on March 6, 2017 with a witness who signed a Proof of Service document to verify this method of service. The 10 Day Notice was provided into evidence and shows a vacancy date of March 16, 2017 due to \$101.00 in unpaid rent that was due on March 1, 2017.

The Landlord testified that the Tenant has paid full rent for March and April 2017 but the Tenant had been issued with a receipt that states the rent payments have been accepted for use and occupancy only. The Landlord now seeks an Order of Possession to end the tenancy.

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 it; if the tenant fails to do either, then they are conclusively presumed to have accepted the 10 Day Notice and they must vacate the rental unit on the date to which the 10 Day Notice relates.

Having examined the 10 Day Notice provided into evidence, I find the contents on the approved form comply with the requirements of Section 52 of the Act. I accept the undisputed oral and witness evidence that the 10 Day Notice was personally served to the Tenant on March 6, 2017. While the Tenant disputed the 10 Day Notice by making his application on March 10, 2017, the Tenant failed to appear for the hearing to present the merits of his application.

In addition, I also accept that in the previous hearing on February 22, 2017, the Tenant had agreed that he was in rental arrears of \$101.00 and there is no evidence before me that the Tenant has made any payments towards these rental arrears. A party is not able to re-argue a case after a final and binding decision is made on that matter.

Therefore, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the 10 Day Notice. As this date has now passed and the Tenant is still residing in the rental unit without paying the rental arrears, the Landlord is granted a two day Order of Possession.

This order must be served to the Tenant and may be filed and enforced in the Supreme Court of British Columbia as an order of that court. Copies of this order for service and enforcement are attached to the Landlord's copy of this Decision.

Pursuant to Section 72(1) of the Act, I also grant the Landlord the recovery of the \$100.00 filing fee paid to file their application. Pursuant to Section 72(2) (b) of the Act, the Landlord may obtain this relief by deducting this amount from the Tenant's security deposit.

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 may recover the filing fee from the Tenant's security deposit. The Landlord's monetary claim is dismissed with leave to re-apply. The Tenant's Application is dismissed without leave to re-apply. 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: April 21, 2017

Residential Tenancy Branch