



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter of VANCOUVER NATIVE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR MNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for unpaid rent, pursuant to section 55, and a monetary order for unpaid rent, pursuant to section 67.

While the landlord and the landlord's agent, AP, attended the hearing by way of conference call, the tenant did not. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package on April 5, 2017 by way of registered mail. The landlord provided a Canada Post tracking number in evidence. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on April 10, 2017, five days after its registered mailing.

The landlord's agent, AP, testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 10, 2017 ("10 Day Notice"), on March 10, 2017, by way of posting to the rental unit door. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the landlord's 10 Day Notice on March 13, 2017, three days after its posting.

Preliminary Issue—Does This Matter Fall Under the Jurisdiction of the *Residential Tenancy Act*?

In their Application, the landlord included a copy of a "Residential Tenancy Agreement", which references a "SSH" Program" as part of this tenancy. SSH is defined as "Seniors Supportive Housing" in the Agreement, and included in the accommodation are the following services:

- a) Rental unit housekeeping
- b) Laundry
- c) One meal per day
- d) 24 hour personal monitoring security
- e) Recreation/Socialization Activities

Section 4 of the *Act* clarifies what the *Act* does not apply to, and subsection (g)(v) specifically excludes living accommodation “in a housing based health facility that provides hospitality support services and personal health care”. I have carefully considered the services provided as part of this “tenancy”, and whether this accommodation falls within the jurisdiction of the *Residential Tenancy Act*. I note that although the above services may possibly exclude this matter from being considered under the *Act*, the specific services do not meet any of the criteria listed under Section 4. This is not a housing based health facility, although the services included are often included in that kind of arrangement.

I have also considered the additional terms listed in the written tenancy agreement. Although the tenancy agreement includes all the standard terms of a standard tenancy agreement under the *Act*, the agreement contains additional terms such as Condition 33 which lists reasons why the landlord may terminate the tenancy such as in the event the tenant “requires supports that are in excess of the resources of the landlord to provide”, and “the tenant can no longer manage their own lifestyle”.

The landlord’s agent in this hearing provided undisputed testimony as the tenant did not attend, and the landlord’s agent described this accommodation as a tenancy that falls under the *Act*. The 20% SSH fee is listed as “Seniors Supportive Housing Rent”. In my analysis I noted that the matter before me is about unpaid rent, and there is no dispute before me regarding the services provided by the landlord, or whether the 20% SSH fee is considered to be “rent”.

The services provided and the written tenancy agreement raise some questions as to whether this matter falls under the jurisdiction of the *Act*. However, after a careful comparison of the wording of the tenancy agreement and section 4 of the *Act*, I accept the landlord’s undisputed testimony that this matter can be considered a tenancy under the *Act*, and that the SSH fee can be considered part of the required monthly rent under section 26 of the *Act*.

Under these circumstances, I am allowing the landlord’s application.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to section 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord's agent, AP, testified regarding the following facts. The tenant is on a month-to-month tenancy with monthly rent in the amount of \$739.00, plus a 20 percent Seniors Supportive Housing fee ('SSH'), payable on the first day of each month. A copy of the written tenancy agreement was included in evidence, with condition 6(d) outlining that "If the tenant is on Income Assistance the tenant will pay the Flat Rent rate set by...plus 20% of the tenant's monthly support portion for the SSH Program". The landlord holds a security deposit in the amount of \$200.00 for this tenancy. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice, indicating an effective move-out date of March 23, 2017. The landlord's agent testified that the tenant owes \$2,980.00 in outstanding rent and SSH fees. This includes the \$425.00 partial payment the tenant made on May 6, 2017 for use and occupancy only. The landlord is seeking an Order of Possession as well as monetary compensation for the unpaid rent and fees.

Analysis

The landlord's agent, AP, provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on March 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 March 23, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

The landlord's agent provided undisputed evidence that the tenant failed to pay the outstanding rent and SSH fees in the amount of \$2,980.00. Therefore, I find that the landlord is entitled to \$2,980.00 in outstanding rent and fees for this tenancy.

The landlord continues to hold the tenant's security deposit of \$200.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. 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 \$2,780.00 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent and fees, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

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.

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: May 30, 2017

Residential Tenancy Branch