



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIA BRITISH COLUMBIA, INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR, CNR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the Act). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant received the landlord's notice of hearing package via Canada Post Registered Mail on May 10, 2017. The landlord's agent (the landlord) stated that the submitted documentary evidence was provided to the tenant in the Canada Post Registered Mail on May 10, 2017. The tenant disputed this stating that no documentary evidence was received. The tenant did not submit any documentary evidence. The landlord provided in his direct testimony the Canada Post Customer Receipt Tracking number as confirmation. I accept the affirmed testimony of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. I find that both parties have been properly served as per sections 88 and 89 of the Act via Canada Post Registered Mail on May 10, 2017.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?
Is the tenant entitled to an order cancelling the 10 Day Notice?
Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on February 1, 2017 on a fixed term tenancy ending on January 31, 2018 as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$1,500.00 payable on the 1st day of each month. A security deposit of \$750.00 was paid on December 22, 2016.

The landlord seeks an order of possession and a monetary order for unpaid rent, unpaid parking fee(s), unpaid locker fee(s), late rent fee(s) and an NSF charge for the months April 2017, May 2017 and June 2017.

Both parties confirmed that the landlord served the tenant with a 10 Day Notice dated April 26, 2017 which states that the tenant failed to pay rent of \$1,565.00 that was due on April 1, 2017. The 10 Day Notice sets out an effective end of tenancy date of May 6, 2017.

The tenant confirmed in her direct testimony that rent was not paid when it was due on April 1, 2017, but that late payments of \$1,000.00 on May 1, 2017 and \$500.00 on June 1, 2017 were made to the landlord. The landlord confirmed in his direct testimony that the tenant had made late rent payments and that the current arrears total, \$3,245.00 as of the date of this hearing. The tenant confirmed the amount of the arrears in her direct testimony.

The tenant stated that the basis for her application to cancel the 10 Day Notice is that she has every intention of paying the rental arrears.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. Although the tenant made an application pursuant to subsection 46(4) of the Act within five days

of receiving the 10 Day Notice, in accordance with subsection 46(5) of the Act, the tenant's failure to pay the rent within five days led to the end of her tenancy on the effective date of the notice. The tenant confirmed in her direct testimony that she has every intention of paying the rent, but has not. In this case, this required the tenant to vacate the premises by May 6, 2017. As that has not occurred, I find that the landlord is entitled to a two-day order of possession. The landlord will be given a formal order of possession which must be served on the tenant(s). If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

As for the landlord's monetary claim, I find based upon the landlord's submissions, documentary evidence and the direct testimony of the tenant confirming the owed arrears that the landlord has established a monetary claim of \$3,245.00.

I authorize the landlord to retain the \$750.00 security deposit in partial satisfaction of this claim. The landlord having been successful is entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession.

The landlord is a monetary order for \$2,595.00.

These orders must be served upon the tenant. Should the tenant fail to comply with the orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as an order of those courts.

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: June 08, 2017

Residential Tenancy Branch