



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DELANEY PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, (Landlord's Application)
MT, O (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the female Tenant on May 16, 2017 and by the Landlord on May 26, 2017.

The Landlord applied through the Direct Request process for an Order of Possession relating to a notice to end tenancy for unpaid rent. However, as the Tenant had applied to dispute the notice to end tenancy, the Landlord's Application was therefore redirected to be scheduled for a participatory hearing with the Tenant's Application in this hearing.

The Tenant applied for "Other" issues, namely a request to cancel the notice to end tenancy for unpaid rent, and for more time to cancel the notice to end tenancy.

Preliminary Issues

Two owners of the rental unit, an agent for the Landlord, and the property manager appeared for the hearing. However, only the Landlord's agent provided affirmed testimony. There was no appearance for the Tenants despite the fact that the Tenant's Application was scheduled to be heard at the same time as the Landlord's Application in this hearing.

The Landlord's agent indicated that the Tenant had agreed to cancel her Application as she was in the process of moving out of the rental unit. However, after checking the Residential Tenancy Branch records, the Tenant's Application remains alive and has not been cancelled. Therefore, I proceeded to make legal findings on the Tenant's Application as follows.

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply. As the Tenants did not appear for the 13 minute hearing, and parties for the Landlord appeared and were ready to proceed, I dismissed the Tenant's Application without leave to reapply.

I then turned my mind to the service of the Landlord's Application to the Tenant. The Landlord's agent testified that each Tenant was served with a copy of the Application and the Hearing Package by registered mail on June 2, 2017. The Canada Post website shows that each Tenant received and signed for the documents on June 6, 2017. Therefore, I find the Landlord effected service on the Tenants pursuant to Section 89(1) (c) of the Act.

The Landlord's agent had submitted an additional 63 page evidence package for the Tenant's file which detailed a monetary claim against the Tenants. However, the Landlord's Application disclosed no monetary claim and was submitted to the Residential Tenancy Branch with a cover letter dated May 26, 2017 stating that the Landlord was not seeking a monetary order but just wants the Tenant out. At the hearing, the Landlord's agent insisted that she had made a monetary claim. However, in the absence of any evidence before me that the Landlord had filed a monetary claim and served notice of this to the Tenants, I decline to make any findings relating to a monetary claim. However, the Landlord is at liberty to file a monetary claim.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord's agent testified that this tenancy started on May 1, 2016 for a fixed term one year which is due to expire on April 30, 2017. Pursuant to a signed tenancy agreement, the monthly rent started at \$1,500.00 and was increased during the tenancy to \$1,555.00, payable on the first day of each month. The Tenants paid a security deposit of \$750.00 which the Landlord still retains.

The Landlord's agent testified that the Tenants failed to pay full rent for May 2017, owing \$805.00. As a result, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on May 3, 2017. The 10

Day Notice was provided into evidence and shows a vacancy date of May 13, 2017 due to \$805.00 for May 2017 unpaid rent.

The Landlord's agent testified that the 10 Day Notice was served to the female Tenant's adult roommate who was residing with the female Tenant at that time. The Landlord provided a Proof of Service document into evidence which is signed by a witness to verify this method of service.

The Landlord testified that the Tenant has also since failed to pay any rent for June and July 2017 and continues to occupy the rental unit even though she is making preparations to move out. Therefore, to be sure, the Landlord requests an Order of Possession to end the tenancy.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement **whether or not** the landlord complies with the Act, unless the tenant has right under the Act to withhold it or deduct from it.

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 must vacate the rental unit on the vacancy date.

Having examined the copy of the 10 Day Notice provided into evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed evidence that the 10 Day Notice was served to the Tenant on May 3, 2017 in accordance with Section 88(e) of the Act.

While the Tenant did make an Application to dispute the 10 Day Notice, the Tenant did not appear for the hearing to explain why she was disputing the 10 Day Notice. There is no evidence before me that the Tenant has paid the outstanding rent or had authority under the Act to withhold rent.

Therefore, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the 10 Day Notice. As the vacancy date on the 10 day Notice has now passed and the Tenant is still occupying the rental unit without paying rent, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and can then be

enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit. Copies of this order are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by the Landlord.

As the Landlord has been successful in their Application, I also grant the Landlord the \$100.00 filing fee under the authority provided to me by Section 72(1) of the Act. The Landlord may achieve this relief by deducting \$100.00 from the Tenants' security deposit pursuant to Section 72(2) (b) of the Act. The remaining amount of the Tenants' security deposit is still subject to the provisions of the Act and must be dealt with accordingly.

Conclusion

The Tenants have breached the Act by not paying rent. Therefore, the Landlord is granted a two day Order of Possession and may recover the filing fee from the Tenants' security deposit.

The Tenant's Application is dismissed **without** leave to re-apply as she failed to appear for the hearing.

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: July 11, 2017

Residential Tenancy Branch