



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR OPR

Introduction

This participatory hearing was convened after the issuance of a June 14, 2017 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord's application for the following to a participatory hearing:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities; and
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent.

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter.

The property manager, K.K, along with the property owner, A.R. attended the hearing, while the tenant did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was sent to the tenant by way of Canada Post Registered Mail on May 16, 2017. A copy of the Canada Post tracking number and receipt were provided to the hearing. Pursuant to sections 88 and 90 of the *Act*, the tenant is deemed to have been served with this 10 Day Notice on May 21, 2017.

On July 13, 2017, the tenant was sent by Canada Post Registered Mail a copy of the Notice of Hearing. A copy of the Canada Post tracking number and receipt were provided to the hearing. Pursuant to sections 89 and 90 of the *Act*, the tenant is deemed to have been served with these documents on July 18, 2017.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Can the landlord recover a monetary award?

Background and Evidence

The tenancy in question began on August 1, 2008. This was a month to month tenancy with rent set at \$1,550.00 per month and was later reduced to \$1,500.00. Deposits of \$775.00 (security) and \$775.00 (pet) continue to be held by the landlord.

The landlord gave testimony that the application for Direct Request was reconvened to a participatory hearing because Adjudicator found that, “the landlord’s name on the residential tenancy agreement does not match the landlord’s name on the Application for Dispute Resolution, the 10 Day Notice or any other documentation submitted with the Application for Dispute Resolution. There is also no documentation referring to the transfer of responsibilities from the landlord named on the residential tenancy agreement to the landlord applying for dispute resolution.”

The landlord explained that the tenancy agreement and the 10 Day Notice along with the application for Direct Request were signed by different people because a change of management to the property occurred on May 1, 2017.

The landlord has applied for an Order of Possession and an amended Monetary Order of \$1,500.00 in unpaid partial rent for the month of May 2017.

Analysis

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant’s failure to take either of these actions within five days has led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by May 26, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award.

Based on the landlord's undisputed testimony that the tenant continues to occupy the rental unit and that rent remains outstanding for May 2017, I find that the landlord is entitled to a Monetary Order of \$1,500.00 for unpaid rent.

Although the landlord's application does not seek to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant \$750.00 security and \$750.00 pet deposits plus applicable interest in partial satisfaction of the Monetary Award. No interest is payable over this period.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. 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.

The tenant is ordered to surrender her pet and security deposits in satisfaction for unpaid rent for the month of May 2017.

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: August 2, 2017

Residential Tenancy Branch