



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LMLTD HOLDINGS CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, OPR

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was adjourned to a participatory hearing. The Landlord filed under the Residential Tenancy Act (the “Act”), for a Monetary Order for unpaid rent and utilities and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the agent of the Landlord (the “Agent”) and the Tenant, who both provided affirmed testimony. The Agent and the Tenant were both provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure state that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent provided a witnessed Proof of Service of Notice of Direct Request Proceeding as well as affirmed testimony in the hearing that the Application for Dispute Resolution by Direct Request and the Notice of Direct Request were sent to the Tenant by registered mail on July 14, 2017. In the hearing the Tenant provided affirmed Testimony that they received a notice card from Canada Post that a registered mail package was available for pick-up, however, they were unable to retrieve it from the post office for lack of identification.

The Agent also provided affirmed testimony in the hearing that their evidence package, along with the Notice of a Dispute Resolution Hearing, was served on the Tenant by the building manager, in person, and by placing a copy under the door of the rental unit on July 28, 2017. The Tenant disputed that the Notice of Dispute Resolution Hearing was served on her personally and testified that it was only placed under her door. However, the Tenant did provide affirmed testimony that they received the Notice of Hearing and as the Tenant appeared today on their own behalf. Based on the foregoing, I find that the Agent served the above noted documents on the Tenant in accordance with section 90 of the *Act*. As a result, I find that the Tenant is deemed served these documents on July 19, 2017, five days after the date of their registered mailing, and in any event, personally served on July 28, 2017.

In the hearing there was some question as to whether or not all documentary evidence was served on and received by the parties in compliance with the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"). However, based on the affirmed testimony of both parties, I am satisfied that both parties have before them, either as a result of the disclosure process or the regular course of the tenancy, all of the documentary evidence before me for consideration. Based on the nature of the documentary evidence and the affirmed testimony of both parties, I also find that both parties had sufficient time to consider the documentary evidence prior to the hearing. As a result, I have accepted all documentary evidence before me into evidence for consideration in the hearing.

Five pages of documentary evidence were received by me after the conclusion of the hearing. I have not accepted this evidence or considered it in my decision as it was late.

I have reviewed all oral and written evidence before me, however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

In the hearing the Agent for the Landlord withdrew their request for a Monetary Order for rent as they stated that the rent has been paid in full since the Application was filed and that no further rent is owed at this time.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Background and Evidence

The Agent submitted a copy of the 6 month fixed-term tenancy agreement between the Landlord and the Tenant, which was signed on August 26, 2015. The tenancy agreement shows a monthly rent of \$750.00, due on the first day of each month for a tenancy commencing on September 1, 2016. In the hearing the Agent and the Tenant both provided affirmed testimony that these are the correct terms of the tenancy agreement.

The Agent submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) in the amount of \$750.00, dated July 2, 2017. The 10 Day Notice has an effective vacancy date of July 15, 2017, and indicates that it was served on the Tenant on July 2, 2017, by attaching a copy to the door of the Tenant's rental unit. The Agent submitted a witnessed and signed Proof of Service of the 10 Day Notice (the "Proof of Service") indicating that the Notice was attached to the door of the

Tenant's rental unit on July 2, 2017. In the Hearing the Agent provided affirmed Testimony that the 10 Day Notice was served as outlined above, in addition to being placed under the Tenant's door. In the hearing the Tenant provided affirmed testimony confirming that she received the Notice on July 2, 2017.

The Notice states that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. In the hearing the tenant provided affirmed Testimony that that they did not dispute the Notice.

In the hearing the Tenant testified that they were unable to pay the rent on time as their wallet was stolen on June 30, 2017, and provided a police file number for reference. The Tenant testified that she has since paid the rent in full for July, 2017, by making two partial rent payments; one in the amount of \$530.00 on July 12, 2017, and one in the amount of \$245.00 on July 26, 2017. The Tenant submitted with their documentary evidence two receipts provided by the Landlord showing these payments. The receipts also indicated that the payments were for "use + occupancy only".

In the hearing, the Agent confirmed the receipt of these payments and that receipts were issued for use and occupancy of the rental unit only.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was served with the 10 Day Notice on July 2, 2017, the day they acknowledged they received it.

I find that the Tenant was obligated to pay the monthly rent in the amount of \$750.00, on the first day of the month as per the tenancy agreement and that the Tenant has failed to either pay the rent owed in full as outlined above within the five days granted under section 46(4) of the *Act* or dispute the 10 Day Notice within that five day period.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, July 15, 2017.

Therefore, I find that the Landlord is entitled to an Order of Possession.

Conclusion

The Landlord is granted an Order of Possession, which will be effective **two (2) days after service of this order** on the Tenant. This Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

As the Landlord withdrew their monetary claim, no Monetary Order has been considered or granted.

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 18, 2017

Residential Tenancy Branch