



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This participatory hearing was convened after the issuance of an August 09, 2017, interim decision by an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's (RTB) direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord's application to a participatory hearing for the following:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67 of the Residential Tenancy Act (the *Act*).

The landlord, the landlord's agent S.A. (the agent) and Tenant S.O (the tenant) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

Preliminary Issue

At the onset of the hearing Tenant S.O requested that her son, Tenant B.C., be removed as a party to the proceedings as he was a minor at the time that the tenancy commenced and Tenant B.C. has not signed the tenancy agreement. The Agent agreed to withdraw their monetary claim against Tenant B.C., as long as the Order of Possession was clear that all parties must vacate the rental unit.

The Agent gave written evidence that a copy of the Landlord's Application for Dispute Resolution was sent by registered mail, along with a copy of all documentary evidence, as a part of the direct request proceeding package on June 30, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find the tenant was deemed served with these documents on July 05, 2017.

The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted to the door of the rental unit on June 07, 2017. In accordance

with sections 88 and of the *Act*, I find that the 10 Day Notice, identifying \$1,650.00 in rent owing for this tenancy, was deemed served to the tenant on June 10, 2017. The landlord testified that \$550.00 of the total amount on the 10 Day Notice is for the security deposit that was never paid by the tenant. The agent testified that the tenant is still in the rental unit and has not made any payments towards the tenancy.

On August 10, 2017, the landlord submitted an Amendment to an Application for Dispute Resolution to the Residential Tenancy Branch (RTB) to request the unpaid rent for July 2017, August 2017 and September 2017.

The landlord testified that the notice of this adjourned hearing, along with the landlord's Amendment to an Application for Dispute Resolution, was sent by registered mail to the tenant on August 11, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing and the tenant acknowledged receipt of these documents. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Notice of Hearing document and the Amendment to an Application for Dispute Resolution.

During the course of the hearing, the landlord testified that the security deposit was never paid and, if the tenancy ends, will not be required. The landlord's amended application for a monetary award of \$4,400.00 is for the following items:

Item	Amount
Unpaid June 2017 Rent	\$1,100.00
Unpaid July 2017 Rent	1,100.00
Unpaid August 2017 Rent	1,100.00
Unpaid September 2017 Rent	1,100.00
Amended Requested Monetary Order	\$4,400.00

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The Agent gave written evidence that this tenancy began on June 01, 2017, with a monthly rent of \$1,100.00, due on the first day of the month. The landlord testified that the security deposit of \$550.00 was never paid.

A copy of the signed 10 Day Notice, dated June 07, 2017, with an effective date of July 17, 2017, was included in the landlord's evidence.

The landlord testified that the tenant moved into the rental unit on or about March 22, 2017, after the tenant had given the landlord a cheque for \$2,750.00 for the security deposit, June 2017 rent and July 2017 rent. The landlord testified that the cheque was written under a name that was different from the tenant's name and that the tenant told him that it was a cheque from her uncle. The landlord testified that the cheque was returned to him for non-sufficient funds and that the landlord then issued the 10 Day Notice to the tenant soon after the cheque was returned to him. The landlord testified that the tenant has not made any payments towards the tenancy.

The tenant testified that she paid the landlord \$2,750.00 in cash on June 09, 2017, upon learning the cheque that she gave to the landlord did not clear. The tenant testified that she believed that the matter of unpaid rent was closed at that time, which is the reason that she did not dispute the 10 Day Notice. The tenant testified that she did not obtain a receipt for the rent paid in cash and had no evidence of the rent and security deposit being paid in cash to the landlord on June 09, 2017. The tenant testified that she paid the landlord for August 2017 rent on July 31, 2017 and paid the September 2017 rent on September 02, 2017. The tenant testified that she has video of her paying the rent to the landlord for the August 2017 rent and for the September 2017 rent but that she did not know how to submit it to the RTB. The tenant requested permission to submit this late video evidence.

Rule 3.19 of the RTB Rules of Procedure (ROP) states that no additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the arbitrator. In providing direction, the arbitrator will specify the date by which the evidence must be submitted to the RTB, whether it must be served to the other party and provide an opportunity for the other party to respond to the evidence if required. In considering whether to admit documentary evidence after the hearing starts, the arbitrator must give both parties an opportunity to be heard on the question of admitting

such evidence. I asked the landlord if they objected to this late evidence and they stated that they did object. I determined that if there was irrefutable evidence of rent being paid, it must be considered.

I ordered the tenant to submit the video evidence to the Maple Ridge Service BC office, who would forward to the RTB, as well as to the landlord and the Agent via each of their individual e-mail addresses (which they gave to the tenant at that time), by the end of the business day on September 08, 2017. I advised the landlord and the Agent that if I determined that the tenant's video was going to be considered, I would adjourn the hearing to a future date to allow the landlord to respond to the evidence. I find that no video evidence was received at the RTB from the tenant by September 14, 2017; therefore I will consider the evidence at hand.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

I find that, based on the balance of probabilities, I prefer the landlord's evidence and I find the tenant failed to pay any rent within five days of receiving the 10 Day Notice and did not make 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 failure of the tenant to take either of these actions within five days led to the end of this tenancy on June 20, 2017, the corrected effective date on the 10 Day Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by June 20, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

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. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Based on the landlord's written evidence and sworn testimony, I find the

landlord is entitled to a monetary award of \$4,400.00 for unpaid rent owing for this tenancy for the period from June 2017 to September 2017.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent:

Item	Amount
Unpaid June 2017 Rent	\$1,100.00
Unpaid July 2017 Rent	1,100.00
Unpaid August 2017 Rent	1,100.00
Unpaid September 2017 Rent	1,100.00
Total Monetary Order	\$4,400.00

The landlord is provided with this Order in the above terms and 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 Orders 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: September 14, 2017

Residential Tenancy Branch