



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, FF (Landlord's Application)
CNR (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 Tenant on June 26, 2017 and by the Landlord on July 12, 2017 under the *Residential Tenancy Act* (the "Act").

The Landlords applied for an Order of Possession and a Monetary Order for unpaid rent, and to recover the filing fee from the Tenant. The Tenant applied to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice").

An agent for the company Landlord (the "Landlord") appeared for the hearing with a witness, both of whom provided affirmed testimony as well as documentary evidence prior to this hearing. However, there was no appearance for the Tenant during the 21 minute hearing. Therefore, I turned my mind to the service of the Landlord's Application and the Hearing Package.

The Landlord explained that she had served her Application, the Hearing Package, and evidence to the Tenant by registered mail on July 13, 2017. The Landlord provided the Canada Post tracking number into oral evidence which is detailed on the front page of this Decision. The Landlord testified that the documents were returned back to her on August 2, 2017 as unclaimed. The Landlord testified that as a result, she then served another copy of the same documents to the Tenant personally on August 4, 2017.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenant was deemed served with the required documents on July 18, 2017 pursuant to Section 90(a) and Section 89(1) (c) of the Act.

In addition, based on the undisputed oral evidence of the Landlord, I find the Tenant was also served personally with the required documents on August 4, 2017 pursuant to Section 89(1) (a) of the Act.

As the Tenant failed to appear for the hearing and present her arguments as to why the 10 Day Notice should be cancelled, I dismiss the Tenant's Application without leave to re-apply. I then continued to hear the undisputed evidence of the Landlord's Application as follows.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for: unpaid rent; late fees; and recovery of the filing fee?

Background and Evidence

The Landlord testified that this tenancy began on January 1, 2016 for a fixed term of one year which continued on a month to month basis thereafter. The tenancy agreement provided into evidence shows rent started off at \$1,800.00 payable on the first day of each month. However, the current monthly rent payable is \$2,202.00.

The Landlord testified that the Tenant's rent cheque for May 2017 was returned as unpaid and by the end of June 1, 2017 the Tenant was in rental arrears of \$4,404.00. As a result the Tenant was served with the 10 Day Notice dated June 19, 2017.

The witness appearing for the Landlord testified that the 10 Day Notice was served personally to the Tenant on June 19, 2017. The 10 Day Notice provided into evidence shows a vacancy date of June 29, 2017 due to \$4,429.00 in unpaid rent. The Landlord testified the increased amount detailed on the 10 Day Notice included a late payment fee of \$25.00.

The Landlord pointed me to clause 6(x) in the signed tenancy agreement which states: *"To pay the landlord a service charge for any returned cheques on the Tenant's account from the Tenant's bank account"*. The Landlord testified that the Tenant's postdated rent cheque for July 2017 was also returned as unpaid and therefore, the total amount of rental arrears is \$6,606.00 plus \$50.00 in late fees for May and July 2017.

The Landlord testified that the Tenant did pay full rent for August and September 2017 for which the Tenant was issued receipts stating that the money was being accepted for use and occupancy only; these were provided into documentary evidence by the Landlord.

The Landlord seeks to end the tenancy with an immediate Order of Possession as the monthly rent paid for August and September 2017 have been applied to the rental arrears. The Landlord seeks a Monetary Order for the following amounts: \$6, 606.00 in paid rent; \$50.00 in late fees; and \$100.00 for the filing fee.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not a landlord complies with the Act. 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, I find the contents on the approved form complied with the requirements of Section 52 of the Act. The Act does not provide that a late rent fee required to be paid by a tenant in a tenancy agreement can be considered or applied as unpaid rent. Therefore, the amount of rent outstanding on the 10 Day Notice should have read as \$4,404.00 not \$4,429.00. However, an incorrect amount of unpaid rent detailed on a 10 Day Notice does not invalidate it.

I accept the undisputed evidence before me that the 10 Day Notice was served to the Tenant personally on June 19, 2017. Therefore, the Tenant would have had until June 24, 2017 to pay the outstanding rent or dispute the 10 Day Notice by June 26, 2017.

While the Tenant did apply to dispute the 10 Day Notice, the Tenant failed to appear for this hearing and prove she had authority to withhold the rental arrears testified to by the Landlord. There is also no evidence before me that the Tenant paid the outstanding rental arrears within the allowed five days after being served with the 10 Day Notice.

Therefore, I grant the Landlord's request for an Order of Possession. As the Tenant continues to occupy the rental unit and is currently in rental arrears, the Landlord is granted an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and may then be filed and enforced in the

Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

In relation to the Landlord's monetary claim, I find the Landlord is entitled to unpaid rent in the amount of \$6,606.00 claimed.

With respect to the late fees, Section 7(1) (d) of the *Residential Tenancy Regulation* allows a landlord to charge an administration fee up to \$25.00 for the return of a tenant's cheque by a financial institution if it is provided for in a tenancy agreement. The Landlord provided a copy of the tenancy agreement which provides for such a fee. As the Tenant failed to pay any rent for May and July 2017, I find the Landlord is entitled to the \$25.00 insufficient funds fee claimed for each of these months.

As the Landlord has been successful in this Application, I also grant the \$100.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the Landlord is issued with a Monetary Order for a total of \$6,756.00 (\$6,606.00 + \$25.00 + \$25.00 + \$100.00). This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court.

Conclusion

The Tenant's Application is dismissed without leave to re-apply as she failed to appear for this hearing. The Tenant has failed to pay rent. Therefore the Landlord is issued with a two day Order of Possession to end the tenancy. The Landlord is granted a Monetary Order in the amount of \$6,767.00 for: unpaid rent; insufficient funds fees; and recovery of the filing fee.

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: September 07, 2017

Residential Tenancy Branch