



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding British Columbia Housing Management Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on September 13, 2017. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and,
- to recover the filing fee for the cost of this application.

The Landlord's Agent, W.Z., provided affirmed testimony at the hearing. The Tenant did not attend the hearing.

The Landlord's Agent testified that he hand delivered the Notice of Hearing along with supporting documentary evidence to the Tenant on August 24, 2017. He stated that he spoke with her at that time and explained the application and what he was seeking. I find the Tenant received this package on August 24, 2017.

The Landlord has requested to amend their application to include rent that has accrued since the original application date (for September 2017). I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

In consideration of this, I allow the Landlord to amend their application to include rent that has accrued since the original application date (for September 2017).

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to recover the filing fee for the cost of this application.

Background and Evidence

The Landlord's Agent provided a copy of the tenancy agreement between the parties into evidence. It confirms the tenancy began on August 1, 2007. Rent is due on the first day of each month. The Tenants rent is adjusted each year, based on income. Last year, up until February 28, 2017, rent was \$534.00. As of March 1, 2017, rent was reduced in accordance with her income declaration to \$405.00. The Landlord does not hold a security deposit.

The Landlord's Agent testified that the Tenant failed to pay rent in 2016 for several months (October, November, and December). During these months, the Tenant only made partial payments. The Landlord's Agent further testified that in January of 2017, the Tenant agreed to pay off the outstanding balance of \$1,230.00 at a rate of \$200.00 per month, on top of her regular monthly rent. The Landlord's Agent stated that the Tenant made these additional payments for the first part of the year, as agreed, until she stopped making payments in May of 2017. She also stopped paying rent in May of 2017.

The Landlord's Agent requested that the application be amended to include September rent, which has accrued since the time of application. The Landlord also provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), hand delivered to the Tenant on August 1, 2017, by A.G. The Proof of Service Document shows that the Tenant signed for this document on August 1, 2017.

The Landlord's Agent testified that the tenant owed \$2,285.00 in unpaid rent and arrears payments, as of August 2, 2017. The Landlord's Agent provided accounting printouts to support his testimony on this matter.

The Tenant did not attend the hearing to dispute the evidence provided by the Landlord.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, within the 5 days allowed, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In this case, based on the affirmed testimony and the documentary evidence before me, I find that there was unpaid rent, on August 1, 2017, the day Landlord issued the 10 Day Notice by leaving a copy with the Tenant. I find the Tenant received the 10 Day Notice on August 1, 2017. I also note that the 10 Day Notice was issued on August 1, 2017, and included rent that was not yet past due (rent was due on the 1st of the month). The total amount the Landlord put on the 10 Day Notice would not have been past due until August 2, 2017. However, I am satisfied that there was still other rent outstanding on the day the 10 Day Notice was issued, and it does not invalidate this notice.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. As there is no evidence before me that the tenant did either, I find the Tenant is conclusively presumed to have accepted the end of the tenancy. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Further, as the Landlord was successful in this hearing, I order the Tenant to pay the filing fee which the Landlord incurred.

In summary, I issue the monetary order on the following:

| Claim | Amount |
|--|-------------------|
| Unpaid rent for 2017 and arrears from 2016 | \$2,285.00 |
| Plus: | |
| September 2017 rent | \$405.00 |
| Filing Fee | \$100.00 |
| TOTAL: | \$2,790.00 |

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$2,790.00** comprised of rent owed. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order 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 13, 2017

Residential Tenancy Branch