



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding 690324 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR

Introduction

Pursuant to my Interim Decision, from October 2, 2017, this hearing was reconvened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was continued on October 25, 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; and,
- a monetary order for unpaid rent or utilities.

The Landlord's Agent, along with a witness and an assistant manager attended the hearing on behalf of the Landlord. The Tenant also attended the hearing. All parties provided affirmed testimony.

The Tenant confirmed that she is currently residing in unit 102 of the building and that she received the Interim Decision I sent on October 2, 2017. That decision was mailed to unit 102. The Agent testified, and provided a copy of his registered mail receipt to show that he sent the application package, including all documentary evidence, to the tenant on October 10, 2017. The Agent confirmed that he mailed this to unit 102, and that it was clearly addressed to the Tenant.

The Tenant stated that she never got any registered mail (sent October 10, 2017), nor did she get any of the evidence the Landlord submitted with that package. She stated that the Landlord did not send anything to her in this manner. The Tenant further stated that she got the Interim Decision I mailed to her on October 2, 2017, which was sent to the same address.

I note that the Tenant says the Landlord never sent anything to her by registered mail, and the Landlord (Agent) says he did. When weighing the evidence on this matter, I find the Agent has provided more compelling evidence that is supported by his proof of registered mailing (receipt) to the unit she is living in. On a balance of probabilities, I find it more likely than not that the Agent sent the package by registered mail on October 10, 2017.

Pursuant to section 88 and 90 of the *Act*, documents delivered in this manner are deemed served after 5 days. I find the Tenant is deemed to have received the application package and evidence on October 15, 2017. I note that refusal to accept or collect registered mail is not a ground for review under the *Act*.

The Agent is seeking a monetary order for unpaid rent and testified that rent has not been paid since July of 2017. As the Tenant remains in the unit and both parties agree rent has not been paid since July of

2017, I amend the Landlord's application to allow for rent that has accrued since the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) was issued. 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.

Further, both parties agree that the Tenant is now living in unit 102. I note the original application listed unit 102 and 103. However, I amend the Landlord's application to reflect unit 102, which is where the Tenant is currently residing.

Both parties were 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?

Background and Evidence

Both parties agree on the following:

There was water damage to the unit the Tenant used to live in (unit 103 – 2 bedroom unit), and while it was being repaired, the Landlord moved the Tenant into unit 102, which was a 3 bedroom unit. Unit 103 had a lower rent (\$465.00) than unit 102. However, the Landlord allowed the Tenant to stay in the larger unit for no additional charge while her place was being fixed. The repairs took almost a year, and her previous apartment was ready for her again in the spring of 2017, should she wish to move back. If the tenant was to remain in the bigger unit by choice, more rent would be due, although the actual amount due for the larger unit is contested, as are the communications on this matter. Rent is due on the first of the month.

The Agent testified that he offered the Tenant the option to move back if she wanted to keep her lower rent of \$465.00, or if she wished to keep the larger unit, she could pay an increased amount of \$650.00 because it has an extra bedroom.

The Tenant testified that she was never told how much the extra rent was and she was waiting for something in writing which laid out how much she was supposed to pay for the larger unit. She stated that she continued to pay the lower amount because the increased amount was not agreed upon or properly communicated in written form.

The Agent testified that the Notice was served to the Tenant in person on June 2, 2017. The Agent provided a Proof of Service document which shows that an individual named G.C., who also attended the hearing and confirmed this with affirmed testimony, personally gave the Notice to the Tenant on June 2,

2017. Another individual named K.L, who was also present at the hearing, testified that she saw G.C. hand the Notice to the Tenant on June 2, 2017. The amount owing at that time was \$465.00, which was rent for June.

The Tenant stated that she continued to pay her old rent (for the smaller unit), despite remaining in the larger unit. She testified that she recalls getting the Notice but could not say exactly when she got it. She further testified that she paid June rent on June 14, 2017. She further stated that she paid rent on July 2, 2017 for the month of July. She stated that she tried to pay August rent on August 2, 2017, but the Agent did not accept her payment of \$465.00 because he wanted her to pay for her use of the larger unit, since the repairs were long since completed in her old unit. She stated that her last rent payment was made in July, and no rent has been paid for the months of August – October of 2017, although she says she has the money in a bank account, pending this decision.

Analysis

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

I note the Agent wanted more money for the larger unit, should the Tenant chose not to move back to her smaller unit. However, the Tenant and the Agent disagree over what amount was to be paid and the terms surrounding any potential increase, including the communication of these terms. It seems that communication broke down before any new agreement for increased rent could be signed or formalized. I find there was no meeting of the minds to establish a new contract at the new rental amount for the larger unit. As such, there is a limited evidentiary record for the increased rental amount due for the larger unit. As such, I will only consider the cost of the smaller unit (\$465.00) when making my determinations with respect to any monetary amount owing for occupancy.

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(1) 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, under section 46(4) of the *Act*, 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, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*. Furthermore, I find the Tenant had insufficient evidence to prove she had any authority under the *Act* to withhold rent.

Next, I turn to the service of the Notice. The Tenant testified that she got the Notice but could not recall which day. In contrast to this, I have clear evidence from the Agent as follows: the Notice was served to the Tenant in person on June 2, 2017. The Agent provided a Proof of Service document which shows that an individual named G.C., who also attended the hearing and confirmed this with affirmed testimony, personally gave the Notice to the Tenant on June 2, 2017. Another individual named K.L, who was also present at the hearing, testified that she saw G.C. hand the Notice to the Tenant on June 2, 2017.

When weighing the evidence on this matter, I find the Agent's evidence more detailed and compelling. I find it more likely than not that the Tenant was served in person, as laid out by the Landlord, on June 2,

2017. I find that the tenant owed \$465.00 in past due rent at the time the Notice was issued on June 2, 2017.

The tenant had 5 days to pay rent in full or file an application for dispute resolution. Although the tenant paid rent (\$465.00) on June 14, 2017, I note this was after the 5 day window. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice, under section 46 of the *Act*. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Next, I turn to the Agent's request for a Monetary Order for unpaid rent. After considering the evidence before me, I find there is sufficient evidence before me to demonstrate that the tenant owes and has failed to pay rent for August, September, and October of 2017 (3x\$465.00). I find the Agent is entitled to a monetary order in the amount of \$1,395.00.

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 **\$1,395.00**. 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: October 27, 2017

Residential Tenancy Branch