



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR MNR

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on December 5, 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.

The Landlord's agent (the "Landlord") attended the hearing and provided affirmed testimony. The Tenant did not attend the hearing.

The Landlord named two tenants in filing this application; however, only one of the tenants (W.G.) is properly named on the Tenancy Agreement provided as evidence. Further, only one tenant, (W.G.) signed the Tenancy Agreement. The Landlord stated that the both respondents occupied the rental unit and they apparently reside together. An occupant of a rental unit is not necessarily a tenant and is not obligated to fulfill the terms so the Tenancy Agreement. Therefore, I have amended the application to exclude the respondent not properly named on the Tenancy Agreement under the doctrine of privity of contract.

The doctrine of privity of contract is a common law principle which provides that a contract cannot confer rights nor impose its obligations upon any person who is not a party to the contract. The premise is that only parties to contracts should be able to sue to enforce their rights or claim damages as such.

The Landlord testified that she gave a copy of the Application Package, along with supporting documentary evidence, to the Tenant on October 15, 2017. I find the Tenant received the package on this day.

The Landlord is requesting to amend her application to include rent that has accrued since the original application date. 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 her application to include rent that has accrued since the original application date.

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?

Background and Evidence

The Landlord testified that monthly rent is \$1,300.00, and is due on the first of the month. The Landlord provided a proof of service document which shows that she personally served the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) to another individual at the rental unit, J.G., on September 7, 2017. The Landlord provided testimony to state that J.G. apparently resides with the Tenant, W.G.

The amount owing at that time was \$1,000.00. The Landlord provided oral testimony and documentary evidence with respect to rent payments and accruals. This evidence is summarized as follows:

Date	Item	Amount Due	Amount Paid	Accrued Balance Owing
September 1, 2017	Rent Due	\$1,300.00		\$1,300.00
September 7, 2017	Rent Payment		\$300.00	\$1,000.00
September 20, 2017	Rent Payment		\$150.00	\$850.00
October 1, 2017	Rent Due	\$1,300.00		\$2,150.00
October 3, 2017	Rent Payment		\$690.00	\$1,460.00
October 14, 2017	Rent Payment		\$1,050.00	\$410.00
November 1, 2017	Rent Due	\$1,300.00		\$1,710.00
November 3, 2017	Rent Payment		\$1,000.00	\$710.00
December 1, 2017	Rent Due	\$1,300.00		\$2,010.00

Total Accrued Balance	\$2,010.00
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Analysis

Based on the unchallenged and 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(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*.

In this case, I find that the tenant owed \$1,000.00 in past due rent at the time the Notice was issued on September 7, 2017. The landlord issued the Notice by giving it to an adult who apparently resides with the Tenant on September 7, 2017. I find the tenant received the Notice on this day, pursuant to section 88 of the *Act*.

Section 88 of the *Act* states:

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

The tenant had 5 days to pay rent in full or file an application for dispute resolution. Although the tenant made partial payments, I note this was not payment in full, and only covered part of the balance owing. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. 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, as summarized in the chart above, I find there is sufficient evidence before me to demonstrate that the tenant owes and has failed to pay \$2,010.00 in past due rent.

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 **\$2,010.00**. 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: December 05, 2017

Residential Tenancy Branch