



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR; MNR; FF

Introduction

This matter was first considered by way of an ex parte Direct Request Proceeding on December 22, 2017. The adjudicator issued an Interim Decision, which should be read in conjunction with this Decision. The adjudicator adjourned the matter to be heard by participatory Hearing on January 17, 2018, in order that questions could be asked and answered with respect to the Tenant's current address and other issues.

Preliminary Matter

The Landlords identified two Respondents in their Application: the Tenant; and the Public Guardian & Trustee (PGT). The Tenant is deceased, having passed away on September 20, 2017. The PGT provided documentary evidence to the Residential Tenancy Branch, a letter dated January 4, 2017, which states in part:

On September 26, 2017, [the hospital] advised the Public Guardian and Trustee of the Province of British Columbia (PGT) that [the Tenant] died.... on September 20, 2017 as the whereabouts of [the Tenant's] kin was unknown.

Section 5 of the *Cremation, Interment and Funeral Services Act*.... (CIFSA).... and section 167 of the *Wills, Estates and Succession Act*.... (WESA)... provide the PGT with interim authority to arrange funeral and make an inventory of a deceased person's estate without being appointed personal representative by the court.

If there is no next of kin willing and able to handle this responsibility when the PGT *may* consider administering the estate after an assessment determines whether its services are warranted. The PGT does not administer estates if the estimated gross value of the estate's assessment of the estate's assets is not sufficient to pay funeral costs and PGT fees. Tge PGT completed its assessment of [the Tenant's] estate and declined the administration as he had no

estate to administer, to wit [the Tenant's] estate was insolvent. Accordingly, the PGT is not the personal representative of [the Tenant's] estate.

On September 29, 2017, the PGT referred the matter of [the Tenant's] funeral arrangements to the Ministry of Social Development and Poverty Reduction's funeral Services Program, per CIFSA, and closed its file.

The PGT or an agent, attorney, employee or other person acting on behalf of the PGT is not personally liable as an executor de son tort by reason of exercising the powers conferred by section 167 of the WESA.

The PGT attached the relevant excerpts from the CIFSA and WESA to its letter.

Based on the documentary evidence provided by the Public Trustee, I find that the Public Trustee is not a party to this matter and I struck its name from the list of Respondents.

The Landlord's agents attended the participatory Hearing and gave affirmed testimony.

The Landlord's agent testified that they mailed the Notice of Reconvened Hearing to the Tenant, by registered mail to the rental unit, on December 27, 2017. The Act deems service in this manner to be effective 5 days after mailing the documents.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a monetary award for unpaid rent?

Background and Evidence

The Landlord's agent TVB gave the following relevant evidence:

When the hospital contacted the Landlord's agent to advise that the Tenant had passed away, the hospital also advised that there were three friends of the Tenant's at the hospital who wished to come to the rental unit and to collect the Tenant's belongings. The Landlord's agent declined to allow the Tenant's friends to have access to the rental unit because they were not next-of-kin. The Landlord's agent stated that he changed the locks on the rental unit in the event that the Tenant's friends had a key.

The Landlord's agent stated that the Landlord requires an Order of Possession so that they can properly dispose of the Tenant's belongings. The Landlord's agent stated that the Tenant's belongings were worth less than \$500.00.

The Landlord provided a copy of the tenancy agreement in evidence. This tenancy began on September 14, 1999. Monthly rent at the beginning of the tenancy was \$435.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$217.50 on September 15, 1999.

On November 21, 2017, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent in the amount of \$835.00 for rent that was due on November 1, 2017 (the "Notice"). The Landlord mailed the Notice to the Tenant at the rental unit and to the Public Guardian and Trustee, both by registered mail.

The Landlord provided copies of Notices of Rent Increase which were issued from time to time throughout the tenancy. The Landlord also provided a copy of the Tenant's ledger and a Direct Request Worksheet, indicating that the Tenant was in arrears of rent in the total amount of \$835.00 effective November 1, 2017.

The Landlord's agent stated that no monies have been paid towards the unpaid rent.

Analysis

I accept the Landlord's agent's undisputed affirmed testimony in its entirety.

Based on the Landlords' testimony, I find that the Landlord's agent took back possession of the rental unit when he changed the locks. Therefore, I find that the Landlord no longer requires an Order of Possession and this portion of its Application is dismissed.

I find that the Landlord is entitled to unpaid rent in the amount of \$835.00 as claimed. I order that the Landlord apply the security deposit and accrued interest towards its monetary award.

The Landlord's Application had merit and I find that it is entitled to recover the cost of the filing fee from the Tenant.

The Landlord is hereby provided with a Monetary Order, calculated as follows:

Unpaid rent	\$835.00
Recovery of the filing fee	\$100.00
Less set-off of the deposit of \$217.50 together with \$20.68 accrued interest	<u><\$238.18></u>
TOTAL	\$696.82

Conclusion

The Landlord's application for an Order of Possession is dismissed. I find that the Landlord took back possession of the rental unit when it changed the locks.

The Landlords are hereby provided with a Monetary Order in the amount of **\$696.82** for service upon the person named by the court to be the Tenant's legal representative. This Order may be enforced in the Provincial Court of British Columbia (Small Claims 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: January 17, 2018

Residential Tenancy Branch