



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's property manager, assistant, building manager and Tenant D.M. (the tenant) attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's property manager (the landlord) indicated that they would be the primary speaker on behalf of the landlord.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord testified that the Application for Dispute Resolution (the Application) and evidentiary package were sent to each tenant by way of registered mail on November 03, 2017. The landlord provided copies of the Canada Post Tracking Numbers to confirm these registered mailings. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with the Application and evidentiary package on November 08, 2017, the fifth day after their registered mailing.

The landlord testified to the fact that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted to the door of the rental unit on September 12, 2017. In accordance with sections 88 and 90 of the *Act* I find that the 10 Day Notice, identifying \$1,988.00 in rent owing for this tenancy, was deemed served to the tenants on September 15, 2017.

At the outset of the hearing the landlord sought to increase their monetary claim from \$8,498.50 to \$10,676.50 to reflect the tenants' failure to pay \$966.00 in monthly rent contributions for November 2017, December 2017 and January 2018, the additional months of unpaid rent waiting for this hearing. Residential Tenancy Rule of Procedure 4.2 states that 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. I allow the amendment as this was clearly rent that the tenants would have known about and resulted since the landlord submitted their Application for Dispute Resolution.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord provided written evidence that this tenancy began on June 01, 2014, with a current monthly rent contribution of \$966.00 effective as of June 01, 2017, due on the first day of each month. The landlord further testified that they did not obtain a security deposit from the tenants.

A copy of the signed 10 Day Notice, dated September 12, 2017, with an effective date of September 25, 2017, was included in the landlord's evidence.

The landlord provided a tenant ledger as well as a monetary worksheet showing the rent owing and paid during this tenancy.

The landlord also provided a copy of a Detail of the Landlord's Application for Dispute Resolution that describes the efforts made to work with the tenants and gives information about the tenants as a father and two daughters who are both 19 years of age.

The landlord testified that they are seeking to end the tenancy due to the unpaid rent. The landlord submitted that the tenants are in subsidized housing and are required to provide the landlord with their tax information for the purpose of calculating their tenant rent contribution but have failed to do so for the last two years. The landlord testified that the tenant rent contribution varies over months at a time due to tax information provided by the tenant.

The landlord stated that they have been working with the tenants regarding their rental arrears and had a payment plan in place but that the tenants have not been paying their full tenant rent contribution or making any payments towards the arrears owing. The landlord testified that the amount owing on the 10 Day Notice is only for the rental owing over the last three months and does not include the total rental arrears accrued since 2015. The landlord's amended application for a monetary award of \$10,676.50 is for rent owing from September 2015 to January 2018.

The tenant testified that there have been numerous circumstances in the tenant's life which have challenged them and impeded the tenant's ability to pay their monthly rent contribution

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the landlord's evidence and the testimony of both parties, I find the tenants failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 46(4) of the *Act* within the same timeframe. In accordance with section 46(5) of the *Act*, due to the failure of the tenants to take either of these actions within five days, I find the tenants are conclusively presumed to have accepted the end of this tenancy on September 25, 2017, the effective date on the 10 Day Notice. In this case, the tenants and anyone on the premises were required to vacate the premises by September 18, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Based on the landlord's evidence and the testimony of both parties, I find the landlord is entitled to a monetary award of \$10,676.50 for unpaid rent from May 2015 to January 2018.

I find that the tenant's daughters were not at the age of majority at the time that the tenancy agreement was signed and that neither daughter signed the tenancy agreement. For this reason I dismiss the monetary portion of the landlord's Application naming Tenant B.M. and Tenant M.M.

As the landlord has been successful in this application, I allow them to recover their \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour against Tenant D.M. in the amount of \$10,776.50, which allows the landlord to recover unpaid rent from May 2015 to January 2018 and to recover the filing fee.

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 17, 2018

Residential Tenancy Branch