



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LU'MA NATIVE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 19 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the tenant relations supervisor for the landlord company named in this application and that she had authority to speak on its behalf at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on November 3, 2017, by way of registered mail. The landlord provided a Canada Post receipt and tracking number with her application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on November 8, 2017, five days after its registered mailing.

The landlord confirmed that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 10, 2017 ("10 Day Notice"), on October 11, 2017, by way of posting to her rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on October 14, 2017, three days after its posting.

The landlord confirmed that she submitted a copy of the 10 Day Notice to the tenant and the Residential Tenancy Branch ("RTB") as part of her application package. However, I did not receive a copy on file. She claimed that she submitted her application online but the RTB officers assisted her with uploading documents in the RTB office. She said they were given the 10 Day Notice to upload with her documents but somehow it did not make it into the package and she was not aware of this until I told her I did not receive a copy. Accordingly, I allowed the landlord to submit a copy of the 10 Day Notice to me at the RTB, via facsimile after the hearing, as I accept the landlord's explanation regarding an RTB administrative error in document uploading. I find that the tenant was properly served with this notice, as noted above, so I find no prejudice to the tenant in accepting a copy of this document after the hearing. I received a copy of the 10 Day Notice from the landlord via facsimile, shortly after the hearing concluded on January 17, 2018, and I considered it in this decision.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the monetary claim to include November 2017, December 2017 and January 2018 rent of \$312.00 for each month. The tenant is aware that rent is due on the first day of each month. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required her to vacate earlier for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay her rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that she did not attend this hearing.

Issues to be Decided

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

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

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This month-to-month tenancy began on December 1, 2007. Monthly rent in the current amount of \$312.00 is payable on the first day of each month. A security deposit of \$373.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice for unpaid rent of \$1,231.00 due on October 1, 2017. The effective move-out date on the notice is October 21, 2017. The landlord stated that the tenant failed to pay rent of \$295.00 for July 2017 and \$312.00 for each month from August to October 2017, totalling \$1,231.00. She claimed that the tenant has also failed to pay rent of \$312.00 for each month from November 2017 to January 2018, totalling \$936.00.

The landlord seeks an order of possession, a monetary order of \$2,167.00 for unpaid rent from July 2017 to January 2018, and recovery of the \$100.00 filing fee.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on October 1, 2017, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on October 24, 2017, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by October 24, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which in this case required the tenant to pay by the first day of each month.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent totalling \$2,167.00 from July 2017 to January 2018, inclusive. Therefore, I find that the landlord is entitled to \$2,167.00 in rental arrears from the tenant.

The landlord continues to hold the tenant's security deposit of \$373.00. Over the period of this tenancy, no interest is payable on the deposit. Although the landlord did not apply to retain the deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$373.00 in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant 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.

I issue a monetary order in the landlord's favour in the amount of \$1,894.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: January 20, 2018

Residential Tenancy Branch