



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 786 SD ESTATE LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“Act”), I was designated to hear an application regarding the above-noted tenancy. The landlord applied 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 20 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 he was the current property manager for this rental unit and that he had authority to speak behalf of the landlord owner at this hearing. The landlord provided an email authorization to this effect with this application.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. A decision is made on the basis of the landlord’s paper application only, not any participation by the tenant. An “interim decision,” dated November 2, 2017, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

By way of the interim decision, the landlord was required to serve the interim decision and notice of reconvened hearing to the tenant. The landlord testified that the tenant was served with the above documents on November 8, 2017, by way of registered mail to the rental unit where the tenant is residing. The landlord provided a Canada Post

tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the interim decision and notice of reconvened hearing on November 13, 2017, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's original application for dispute resolution by direct request on November 1, 2017, by way of registered mail to the rental unit where the tenant is residing. The landlord provided a Canada Post receipt and tracking number with the application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's original application on November 6, 2017, five days after its registered mailing.

The landlord confirmed that the tenant was served with an amendment to the landlord's application on December 22, 2017, by way of registered mail to the rental unit where the tenant is residing. This amendment increased the landlord's monetary claim to include unpaid rent of \$4,800.00 from November 2017 to January 2018. The landlord requested a total monetary claim for unpaid rent of \$12,900.00 in the amendment. The landlord provided a Canada Post receipt and tracking number with this application to confirm service. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's amendment on December 27, 2017, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 2, 2017, ("10 Day Notice") in person to an adult residing with the tenant. The landlord provided a signed, witnessed proof of service with the application. He testified that the former property manager served the notice to a male adult living with the tenant, who confirmed verbally when being served, that he lived with the tenant. This service was witnessed by another person as noted on the proof of service. In accordance with section 89 of the *Act*, I find that the tenant was served with the landlord's 10 Day Notice on October 2, 2017.

Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim to include November 2017 to January 2018 rent, totalling \$4,800.00. The landlord served an amendment to this application to increase the landlord's monetary claim to include the above unpaid rent amounts and I find that the tenant was deemed served with this amendment, as noted above. I find that the tenant is aware that rent is due as per her tenancy agreement. 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 claims 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 award for unpaid rent?

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

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on February 28, 2017 for a fixed term tenancy ending on February 28, 2018, after which it becomes a month-to-month tenancy. Monthly rent in the amount of \$1,600.00 is payable on the first day of each month. A security deposit of \$800.00 and a pet damage deposit of \$800.00 were paid by the tenant and the landlord continues to retain both deposits. The tenant and the former property manager signed a written tenancy agreement and a copy was provided for this hearing. The landlord took over the property management duties in November 2017 and provided an email from the landlord, to this effect. The landlord owner of this rental unit has always remained the same for this tenancy, only the property managers have changed. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice, which has an effective move-out date of October 14, 2017, indicating that rent in the amount of \$8,100.00 was due on October 1, 2017. The landlord provided a copy of the notice. The landlord explained that the tenant owes rent of \$100.00 for May 2017 and rent of \$1,600.00 for each month from June 2017 to October 2017, totalling \$8,100.00 on the 10 Day Notice. The landlord confirmed that the tenant failed to pay an additional \$1,600.00 per month in rent from November 2017 to January 2018, totalling \$4,800.00.

The landlord seeks an order of possession based on the 10 Day Notice, a monetary order of \$12,900.00 for unpaid rent from May 2017 to January 2018, and the \$100.00 filing fee paid for this application.

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 receiving the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on October 14, 2017, the 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 14, 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*, as the 10 Day Notice complies with section 52 of the *Act*.

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the 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 of \$100.00 for May 2017 and rent of \$1,600.00 for each month from June 2017 to January 2018, inclusive. Therefore, I find that the landlord is entitled to \$12,900.00 in rental arrears from the tenant.

The landlord continues to hold the tenant's security deposit of \$800.00 and pet damage deposit of \$800.00. Although the landlord did not apply to retain the deposits, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security and pet damage deposits, totalling \$1,600.00, in partial satisfaction of the monetary award. No interest is payable over the period of this tenancy.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 application 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. 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 order the landlord to retain the tenant's security deposit of \$800.00 and pet damage deposit of \$800.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$11,400.00 against the tenant, for the balance due. 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 21, 2018

Residential Tenancy Branch