



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR ET FF CNR FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- an early end to this tenancy and an order of possession pursuant to section 56;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord's 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to present evidence and make submissions. The parties confirmed service of the respective applications for dispute resolution and no issues were raised with respect to the service of evidence on file.

Tenant D.T. called into the hearing a few minutes after it had begun. She acknowledged service of the landlord's application; however, she exited the conference call shortly afterwards and did not return to provide any further testimony.

Preliminary Issue – Bankruptcy of Tenant D.H.

Tenant D.H. was represented by K.M. and M.D. on behalf of the Public Guardian & Trustee. K.M. advised that the Public Guardian & Trustee has had conduct of the legal and financial affairs of tenant D.H. since 2016. K.M. advised tenant D.H. does not have any legal authority to dispute the 10 Day Notice issued by the landlord and the dispute was only filed by tenant D.T. K.M. further advised that tenant D.H. has been subject to a bankruptcy since early 2017 and is still under bankruptcy proceedings. As such, K.M. argues the landlord's monetary claim against tenant D.H. should be subject to a stay of proceedings under the Bankruptcy and Insolvency Act.

Section 69.2(1) of the Bankruptcy and Insolvency Act provides:

Stay of proceedings — consumer proposals

69.2 (1) Subject to subsections (2) to (4) and [sections 69.4](#) and [69.5](#), on the filing of a consumer proposal under [subsection 66.13\(2\)](#) or of an amendment to a consumer proposal under subsection 66.37(1) in respect of a consumer debtor, no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy until

- (a) the consumer proposal or the amended consumer proposal, as the case may be, has been withdrawn, refused, annulled or deemed annulled; or
- (b) the administrator has been discharged.

The stay of proceedings applies to any creditor "for the recovery of a claim provable in bankruptcy". However, in this case, the landlord's application is for a monetary award pertaining to a debt arising after the tenant's filing of a Consumer Proposal and as such I find it is not subject to the stay of proceedings. K.M. advised the tenant D.H. has been subject to a bankruptcy proceeding since early 2017. The landlord's monetary claim subject to this application is for the period of August 15, 2017 to December 31, 2017. As such, any monetary order issued by way of this decision will be enforceable against both tenants named in this application.

Preliminary Issue – Amendment to Landlord's Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord's representative advised that the tenants had not yet vacated the rental unit and therefore asked to amend the claim to include additional outstanding rent incurred after the filing of the application. Although the tenants did not have prior notice of this claim, I find that the tenants should reasonably have known that

the landlord would suffer this loss if the tenants neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

The landlord representative further advised that they were only pursuing an order of possession based upon the 10 Day Notice and not the application for an early end to the tenancy.

Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

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 tenants?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on August 15, 2016 with a monthly rent of \$3000.00 payable on the 15th day of each month. The tenants paid a security deposit of \$1500.00 at the start of the tenancy which the landlord continues to hold.

The landlord's representative submits the tenants failed to pay the \$3000.00 rent payable on August 15, 2017 and has failed to pay any rent since. The landlord's representative submits that on October 20, 2017 tenant D.H. was personally served with the 10 Day Notice. A witnessed proof of service of this Notice was provided with the application.

The landlord's representative submits that the tenant did not pay the outstanding amount of rent as indicated on the 10 Day Notice within five days of service of the Notice.

The landlord's monetary claim is for outstanding rent in the amount of \$13,500.00. The landlord's representative submits that this includes unpaid rent for the period of August 15, 2017 to December 31, 2017.

Tenant D.H.'s representatives acknowledged service of the 10 Day Notice and that the tenants did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. The amount of outstanding rent as claimed by the landlord was not disputed.

Analysis

I am satisfied that tenant D.H. was personally served with the 10 Day Notice on October 20, 2017 pursuant to section 88 of the Act.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants application must be dismissed as the tenant acknowledged rent was not paid in full within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

I find that the tenant were obligated to pay monthly rent in the amount of \$3000.00 but failed to pay rent for the period of August 15, 2017 to December 31, 2017. I accept the landlord's claim for outstanding rent of \$13,500.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$13,600.00.

The landlord continues to hold a security deposit of \$1500.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of

section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$12,100.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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 the landlord a Monetary Order in the amount of \$12,100.00. 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 02, 2018

Residential Tenancy Branch