



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPRM-DR

Introduction

On December 7, 2017, an adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) issued an Interim Decision regarding the landlords' application 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 their filing fee for this application from the tenant pursuant to section 72.

After an *ex parte* hearing and in her Interim Decision, the Adjudicator adjourned the landlords' application to a participatory hearing, which I have presided over in accordance with the delegation provided to me under the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:20 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:00 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

At the hearing, Landlord RAG (the landlord) testified that the tenant had not paid any rent for November or December 2017, and January 2018. She requested an increase in the monetary award from \$700.00 cited in the original application to \$2,100.00, to reflect these additional two months of unpaid rent. In accordance with the powers delegated to me under the *Act* and as the tenant is clearly aware that additional months of rent have become owing since she received the 10 Day Notice, I amend the landlords' application for a monetary award to include the additional two months of rent that have become owing for December 2017 and January 2018.

Preliminary Issue – Service of Documents

The landlords testified that they placed the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under the tenant's door on November 23, 2017, when she did not answer the door when they knocked to hand that Notice to her. The landlords presented written evidence

supported by their sworn testimony that the tenant posted a message on a social media website that she received the 10 Day Notice within an hour of their placement of the 10 Day Notice under her door. The landlords entered a copy of the tenant's social media posting as written evidence for this hearing.

Section 88 of the *Act* establishes the ways that documents such as the 10 Day Notice can be served to a tenant. Section 88 of the *Act* reads in part as follows:

88 *All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:*

- (a) by leaving a copy with the person;...*
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides...*
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;*
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides...*
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides...;*
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;*
- (i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];*
- (j) by any other means of service prescribed in the regulations...*

Although the landlords have not served the tenant with the 10 Day Notice in one of the ways for serving documents pursuant to section 88 of the *Act*, paragraph 71(2)(b) and (c) of the *Act* provide me with the discretion to determine the following:

- (b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;*
- (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.*

In accordance with paragraph 71(2)(b) and (c), I find the 10 Day Notice was sufficiently served to the tenant for the purposes of the *Act* on November 23, 2017, as declared by the landlords. I do so as I accept the landlords' undisputed sworn testimony and written evidence that the

tenant confirmed receipt of the 10 Day Notice shortly after their placement of that Notice under her door on November 23, 2017. The landlords also provided the tenant with a copy of the 10 Day Notice as part of the landlords' direct request application and had a further opportunity to contest the service of the 10 Day Notice at this hearing. The tenant has made no submission that she failed to receive the 10 Day Notice as declared by the landlords and did not attend this hearing.

The landlords provided written evidence and sworn testimony that they sent the tenant a copy of the dispute resolution hearing package by registered mail on December 7, 2017. They also provided written evidence and sworn testimony that they sent the tenant a copy of the Interim Decision of December 7, 2017 and the Notice of Dispute Resolution Hearing to the tenant by registered mail on December 11, 2017. The landlords provided copies of the Canada Post Tracking Numbers to confirm these registered mailings. Landlord RAG also testified that she had checked Canada Post's Online Tracking System, which revealed that these documents were successfully delivered to the tenant. She also testified that she had contacted the tenant on the weekend prior to this hearing to remind her of the scheduled time and date for this hearing.

I find that the tenant was deemed served with the Interim Decision, the dispute resolution hearing package and the written evidence in accordance with sections 88, 89 and 90 of the *Act*, by December 16, 2017, the fifth day after their registered mailing.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy began on June 1, 2016. According to the terms of the Residential Tenancy Agreement (the Agreement), monthly rent is set at \$700.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$350.00 security deposit paid on June 16, 2016.

The landlords' 10 Day Notice identified \$700.00 as owing for November 2017, as of November 23, 2017, when they issued the 10 Day Notice. Since then, there is undisputed sworn testimony from the landlord that the tenant has neither paid the amount identified as owing in the 10 Day Notice, nor paid anything for the subsequent two months. The landlord testified that her daughter has been waiting to move into the rental unit for some time and will be making arrangements to move into the rental unit once she provides notice to her existing landlord when this rental unit become vacant.

Analysis

The tenant failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. The tenant has not made 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 tenant's failure to take either of these actions within five days led to the end of this tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by the corrected effective date of that notice, December 3, 2017. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Section 26(1) of the *Act* establishes 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."

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. There is undisputed evidence that the tenant has not paid any rent for November and December 2017, and January 2018. 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.

I allow the landlords' application for a monetary award of \$1,400.00 for November and December 2017. Based on the date of this decision and the landlord's sworn testimony that her daughter would likely have to give one month's notice to her existing landlord before she can move into the rental unit, I find that the landlords will likely be unable to recover their loss of rent for January 2018. As such, I also allow the landlords' application for a monetary award of \$700.00 for rent owing as of January 1, 2018.

Although the landlords' application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenant's \$350.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant 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 under the following terms, which allows the landlords to recover unpaid rent and their filing and to retain the tenant's security deposit:

Item	Amount
Unpaid November 2017 Rent	\$700.00
Unpaid December 2017 Rent	700.00
Unpaid January 2018 Rent	700.00
Less Security Deposit	-350.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1,850.00

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 08, 2018

Residential Tenancy Branch