



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR FFL

Introduction

This application for an Order of Possession and a monetary order was originally made by the landlord by Direct Request. The application was adjourned to a participatory hearing to clarify the details of the landlord's application.

The landlord applied pursuant to the *Residential Tenancy Act* ("the Act") for: an Order of Possession for Unpaid Rent pursuant to section 55 and authorization to recover the filing fee for this application pursuant to section 72.

After the matter was adjourned to a participatory hearing the landlord submitted an Amendment to an Application for Dispute Resolution form seeking to include a monetary claim a monetary claim of \$9,750.00. The landlord did not indicate on this form what this monetary claim represented. The landlord also submitted a copy of a monetary order worksheet in which she identified a claim of \$6,750.00 for unpaid rent and lost revenue in the amount of \$3,000.00.

The landlord provided only a monetary amount on his amendment to application form. However, I find that the attached monetary order worksheet (indicating the outstanding rental amounts and anticipating failure to pay rent for the months while awaiting this application) provided sufficient information to the tenant as to the nature of the landlord's monetary claim. I also find that this amendment should have been reasonably anticipated by the tenant in that the landlord had applied in October 2017 to end the tenancy for unpaid rent

The tenant did not attend this hearing, although I waited until 9:51 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions with respect to his application.

The landlord testified that he served the tenant with a 10 Day Notice for Unpaid Rent on August 17, 2017. He testified that he sent the Notice by registered mail because the rental unit is on an island. He provided evidence of the completion of the registered mailing to the tenant. He testified that the 10 Day Notice was unclaimed by the tenant, based on the tracking information from Canada Post. I accept that the tenant was deemed served with the notice to end tenancy

pursuant to section 88 and 90 of the Act on August 22, 2017 based on the landlord's undisputed testimony.

The landlord testified that he served the tenant with his Direct Request Application and materials on October 18, 2017 by registered mail, providing Canada Post tracking information for this delivery, as well. I find that the tenant was deemed served in accordance with section 89 and 90 the Act with the landlord's Direct Request Application notifying the tenant of the landlord's intent to end the tenancy on October 23, 2017.

The landlord testified that he provided a copy of the Direct Request decision as well as the Notice of Hearing for this hearing by registered mail on October 23, 2017. He testified that he served his Amendment to his application at the same time in the same registered mail package. The landlord provided undisputed testimony of the registered mailing as well as tracking information by Canada Post at this hearing. Based on the testimony of the landlord, undisputed and supported by evidence of the mailings, I find that the tenant was sufficiently served with the Residential Tenancy Branch Direct Request decision as well as the Notice for this hearing and the landlord's Amendment to his application pursuant to section 89 and 90 of the Act.

Issue(s) 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 to the unit?

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

Background and Evidence

The landlord gave evidence that the residential tenancy agreement began on July 1, 2015. He provided a copy of the tenancy agreement as evidence for this hearing. The landlord testified that the tenant consistently paid his rent in a timely fashion in 2015 and 2016 however the landlord testified that, over the course of 2017, the tenant has not paid his monthly rental amount of \$750.00 at all. The landlord testified that the tenant has not vacated the rental unit and has not paid rent therefore the landlord sought an Order of Possession as well as a monetary order for unpaid rent. He testified that he has "used" the tenant's \$375.00 security deposit (paid by the tenant at the outset of the tenancy) to compensate for a month in 2016 where the tenant only paid half of the monthly rental amount. The landlord was unable to provide evidence as to what month's rent the security deposit was supposed to be "used" towards.

The landlord testified that the tenant did not pay the \$750.00 monthly rental amount in January, February, March, April, May and June 2017. The landlord testified that he spoke to the tenant in the first 6 months of 2017 and that the tenant repeatedly told him he would be receiving money soon and would then pay to the landlord the outstanding rent.

The landlord testified that the tenant did not pay the \$750.00 monthly rent in August 2017. As a result of the tenant's continuous failure to pay rent, the landlord issued a 10 Day Notice for Unpaid Rent on August 17, 2017. Because of the remoteness of the rental unit, the landlord sent the 10 Day Notice by registered mail. The 10 Day Notice indicated that 6 months' rent remained unpaid. The landlord testified that he was reassured by the tenant, after receipt of this 10 Day Notice that the tenant would be able to use an upcoming inheritance to pay the outstanding rent. The landlord testified that, as of the date of this hearing, the tenant has not paid any portion of his rent since December 2016. The landlord testified that he would have acted sooner but the tenant had always been reliable in the past and the tenant continued to assure him that he would have the money soon.

The landlord has applied for an Order of Possession for unpaid rent for the months of January, February, March, April, May, June, July, August, September, October, November, or December 2017. The landlord testified that the tenant did not pay rent of \$750.00 or any outstanding unpaid rent after receipt of the 10 Day Notice. The landlord testified that, as of the date of this hearing, the tenant has not paid any outstanding rent and has also paid no rent for the months of July 2017 through to December 2017. The landlord testified that the tenant has not paid rent for the month of January 2018 and continues to reside in the rental unit.

The landlord also amended his application to include a request for a monetary award of \$9750.00. At the hearing, he testified that the \$9750.00 represented 13 months of unpaid monthly rent at \$750.00 per month. On the amendment application itself, he provided no information in the box provided to describe the nature of his claim however he did include a monetary worksheet that referred to unpaid rent for January 2017 to September 2017 and "loss of revenue" from October 2017 to January 2018.

Analysis

I accept the evidence of the landlord at this hearing that the tenant failed to pay the August 2017 rent within five days of receiving the 10 Day Notice to End Tenancy. I accept the testimony of the landlord that the tenant's rent for the entire year 2017 was not paid. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. The tenant has not paid any of the outstanding rental arrears. Therefore, 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 his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises. As the landlord has testified that the tenant continues to reside in the rental unit, I find that the landlord is entitled to a 2 day Order of Possession.

With respect to the landlord's application for a monetary order, I find that the landlord has provided sufficient information to prove on a balance of probabilities that the tenant failed to pay rent from January 2017 to January 2018. I accept the landlord's testimony, provided in a candid and compelling manner. He acknowledged that he should have filed his application sooner so that the tenant would have less debt to him. He testified that, based on the tenant's previous

history of regular payment of rent, he accepted the tenant's promise that payment would come soon.

I find that the landlord is entitled to receive an order for unpaid rent for 13 months from January 2017 to January 2018. I accept this uncontested evidence offered by the landlord that the tenant did not pay rent in January, February, March, April, May, June, July, August, September, October, November, December 2017 or January 2018. The landlord submitted a monetary worksheet describing his 6 months of rent (from January to August 2017) and his 6 months of potential rental loss (from September 2017 to January 2018). I accept the landlord's evidence that the tenant continues to reside in the rental unit and has not paid rent, as anticipated by the landlord's completion of the monetary order worksheet. I also find that the tenant could reasonably be presumed to be aware of the outstanding rental arrears and the landlord's intention to collect on those arrears as part of his application. Further, I find that the tenant was sufficiently notified of the landlord's monetary claim for unpaid rent by the amendment served to him October 23, 2017. Therefore, I am issuing the attached monetary order that includes the landlord's application for \$9750.00 in unpaid rent.

I note that, during his testimony with respect to the tenant's security deposit, the landlord testified that the tenant paid only half a month's rent at one point in 2016 however the landlord was unable to provide any particular details to establish that the tenant had failed to pay a half months' rent in 2016 and that the tenant had agreed that the half months' rental arrears be paid to the landlord using his security deposit. While the rest of the testimony of the landlord was clear, candid and providing sufficient detail to support his claim, I find that he continues to hold the tenant's \$375.00 security deposit. Therefore, the security deposit amount will be deducted from the total amount of the landlord's monetary award in accordance with section 72 of the act. I refer the landlord to sections 20 and 38 of the Act that address the landlord's obligations regarding a tenant's security deposit.

The landlord also indicated at this hearing that he wished to apply for compensation with respect to damage to the rental unit - he provided some photographic evidence of the rental unit and other photographs on October 25, 2017: he did not provide any information with respect to service of this evidence to the tenant nor did he indicate clearly in his application that he intended to seek money for damage to the rental unit. Therefore, I advised the landlord that I will not consider this claim that he raised at the hearing.

As the landlord was successful in his application, he is entitled to an Order of Possession, a monetary order for unpaid rent and to recover his \$100.00 filing fee for this application.

Conclusion

I dismiss with leave to reapply the landlord's application to recover for damage to the rental unit.

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlord as follows:

Rental Arrears for 13 months @ \$750.00	\$9750.00
Security Deposit retained by landlord	-375.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$9475.00

The landlords are provided with this monetary Order in the above terms and 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 18, 2018

Residential Tenancy Branch