



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was adjourned to a participatory hearing. The Landlord filed under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent and the recovery of the filing fee and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Agent testified that the Tenant was personally served a copy of the Application and the Notice of Direct Request on October 31, 2017, and provided a Proof of Service of Notice of Direct Request Proceeding in support of this testimony. As a result, I find that the Tenant was personally served with the Application and the Notice of Direct Request on October 31, 2017.

The Agent also provided affirmed testimony that the Notice of Hearing was personally served on the Tenant in the presence of the witness E.N. on November 1, 2017. As a result, I find that the Tenant was personally served the Notice of Hearing on November 1, 2017.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Agent, a copy of the Decision and any applicable Orders will be e-mailed to them at the address provided in the hearing.

Preliminary matters

Amendment: Parties to the Dispute

On October 25, 2017, the Landlord applied for Dispute Resolution by Direct Request naming two tenants as Respondents, T.R. and J.P. On November 1, 2017, an interim decision was rendered in relation to this matter. In the interim decision the Adjudicator stated that they could not confirm service of the Direct Request proceeding package to the Tenant J.P. The adjudicator subsequently adjourned the matter to be heard at a participatory hearing.

In the participatory hearing the Agent testified that the tenant J.P. has not lived in the rental unit for some time and is believed to be living in another province. The Agent testified that as the tenant J.P. did not provide a forwarding address, copies of the Application, Notice of Direct Request, and Notice of Hearing, were sent to her last known address, which was the address she gave prior to the beginning of the tenancy.

I find that the opportunity to know the case against you is a fundamental aspect of the dispute resolution process. Based on the Agent's testimony, I am not satisfied that the tenant J.P. received or was served with the Application, Notice of Direct Request, or the Notice of Hearing in accordance with the *Act* or Rules of Procedure as the Agent could not provide me with any assurance that J.P. resides at her last known address or is likely to receive mail sent to here there. As a result, I am not satisfied that J.P. was aware of the case against her and I therefore find that it would be a breach of natural justice and the Rules of Procedure and significantly prejudicial towards J.P. to allow the Application to proceed against them.

The Agent testified that they wished to proceed with the Application listing only the tenant T.R. as the Respondent, as T.R. was properly served all of the above noted documentation. As tenants are jointly and severally liable under the *Act*, I find that it is the Landlord's right to make a claim against only one of the Tenants. As a result of the above, and in accordance with the *Act*, I amended the Application to list only A.P. as the Respondent.

Amendment: Rent

In the hearing the Agent testified that since the 10 Day Notice was served, the amount of outstanding rent owed by the Tenant has increased. The Rules of Procedure state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application was made. As a result, I have amended the Application to include outstanding rent for November and December, 2017, and January, 2018.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent and the recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Is the Landlord entitled to retain the security deposit paid by the Tenant pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the tenancy began on March 1, 2017, and that rent in the amount of \$1,000.00 is due on the first day of each month. The Agent testified that a \$500.00 security deposit was also paid, which they still hold. The Agent testified that the Tenant has a history of missed and incomplete rent payments and that when rent was not paid as required on October 1, 2017, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was served.

The 10 Day Notice in the documentary evidence before me, dated October 12, 2017, has an effective vacancy date of October 12, 2017, and indicates that as of October 1, 2017, the Tenant owed \$1,600.00 in outstanding rent. The Agent testified that there is a clerical error on the 10 Day Notice and stated that the 10 Day Notice was actually signed on October 2, 2017, not October 12, 2017. In support of this testimony the Agent pointed to the witnessed and signed Proof of Service Notice to End Tenancy (the "Proof of Service") which indicates that the 10 Day Notice was personally served on October 2, 2017. The Agent further testified that there is also a clerical error on the Proof of Service and stated that although it indicates that the 10 Day Notice was personally served on the tenant on October 2, 2017, it was actually served on the Tenant's roommate, who is an adult who resides with Tenant. In any event, the Agent testified that the Tenant acknowledged receiving the 10 Day Notice from their roommate.

The Direct Request Worksheet shows that as of October 1, 2017, the Tenant owed \$1,600.00 in outstanding rent. The Agent testified that since the 10 Day Notice was served, the Tenant has not paid any rent and that as a result, the Tenant currently owes \$4,600.00 in outstanding rent; \$1,000.00 a month for November and December, 2017, and January, 2018, plus the \$1,600.00 outstanding as of October 1, 2017.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

Although the Agent testified that there were clerical errors in both the 10 Day Notice and the Proof of Service, I have accepted the undisputed and affirmed testimony of the Agent that an adult who resides with the Tenant (the Tenant's roommate) was personally served with the 10 Day Notice on October 2, 2017, in the presence of a witness, and that the Tenant acknowledged receiving the 10 Day Notice from this person. As a result of the foregoing, and in accordance with section 88 of the *Act*, I find that the Tenant was served with the 10 Day Notice on October 2, 2017, the date it was personally served on an adult who resides with them. I also find that the Tenant was obligated to pay the monthly rent of \$1,000.00, on time and in full each month.

As there is no evidence before me to the contrary, I find that the Tenant has failed to pay the rent owed in full as outlined above within the five (5) days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five (5) day period.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, October 12, 2017, and the Landlord is therefore entitled to an Order of Possession.

Based on the documentary evidence and testimony before me, I find that the Tenant owes the Landlord \$4,600.00 in outstanding rent. Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to recovery of the \$100.00 filing fee and to retain the \$500.00 security deposit paid by the Tenant, in full, as partial recovery of the outstanding rent. As a result, the

Landlord is therefore entitled to a Monetary Order in the amount of \$4,200.00; \$4,600.00 in outstanding rent, plus the \$100.00 filing fee, less the \$500.00 security deposit paid by the Tenant.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$4,200.00. The Landlord is provided with this 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 19, 2018

Residential Tenancy Branch