



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy issued on November 25, 2017 (the "Notice") as well as recovery of the filing fee.

The matter was originally brought by way of Direct Request Proceeding; however, as there were questions regarding the Tenant's name, the matter was adjourned to a participatory hearing.

The participatory hearing was scheduled for teleconference on January 2, 2018. Only the Landlords called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord G.H. testified that they served the Tenant with the Notice of the participatory Hearing and the Landlord's Application on December 15, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of December 20, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlords' submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession?
2. Are the Landlords entitled to monetary compensation for unpaid rent?
3. Should the Landlords recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement providing that this tenancy began September 1, 2013.

As noted, this matter was adjourned from a Direct Request Proceeding due to questions regarding the Tenant's name.

During the hearing the Landlord testified that when the Tenant applied for the rental in 2013 the Tenant applied under the name N.D. with her husband D.D. The Landlord stated that he also obtained a copy of her provincially issued B.C. I.D. which also had the same name, N.D. The Tenant N.D., and D.D. were noted as the Tenants on the tenancy agreement.

The Landlord stated that later on the Tenant began paying her rent with cheques under the name N.G. When the Landlord asked the Tenant about her name she informed him that she never really changed her name to N.D., which was her previous married name.

The Landlord confirmed that the Tenant's husband, D.D., passed away in 2016 and that for the last year the Tenant has been using the name N.G. The Landlord explained that it was for that reason he issued the 10 Day Notice in the name of N.G., as well as naming N.G. on the Application for Dispute Resolution.

Monthly rent was payable in the amount of \$1,150.00 per month. At the time the Notice was issued the Tenant failed to pay the October and November 2017 rent such that the sum of \$2,300.00 was owed.

Introduced in evidence was a copy of the proof of service confirming the Tenant was personally served the Notice on November 25, 2017. The Notice informed the Tenant that she had five days in which to pay the outstanding rent or apply to dispute the Notice. The Landlord confirmed she did not pay the outstanding rent and that he has not been served with any application for dispute resolution.

At the time of the hearing the Tenant also owed rent for December 2017 and January 2018 such that the sum of \$4,600.00 was owed for rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Often when women marry they assume their husband's surname. Although they may use their married name, unless a formal application under the provincial *Name Act* is made, their legal name remains their birth name, often referred to as their "maiden name". In the case before me I accept that the Tenant, N.G., used her married name, N.D. when applying to rent the rental unit and when signing the residential tenancy agreement. I find it was reasonable for the Landlord to apply for dispute resolution under her maiden name once she reverted to that name; however, without the explanation provided during the participatory hearing it was not readily apparent why the name on the agreement and the application were different. I am satisfied with the Landlord's explanation during the hearing.

Pursuant to section 64(3)(c) of the *Residential Tenancy Act* and *Rule 4.2* of the *Residential Tenancy Branch Rules of Procedure* I amend the Landlord's Application for Dispute Resolution to include the Tenant's legal name and her previously used married name.

In terms of the application before me, I find the Landlord is entitled to the relief sought.

The evidence establishes that the Tenant did not paid the outstanding rent and did not apply to dispute the Notice within the strict five day time limit and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy

ended on the effective date of the Notice. Accordingly, I find that the Landlords are entitled to an Order of Possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an Order of that Court.

I also accept the Landlords' evidence that the Tenant failed to pay rent as required by the tenancy agreement. I therefore find that the Landlords have established a total monetary claim of \$4,700.00 comprised of \$4,600.00 in unpaid rent for the months October 2017, November 2017, December 2017 and January 2018 as well as recovery of the \$100.00 fee paid by the Landlords for this application. Accordingly, I grant the Landlords a Monetary Order under section 67 for the balance due of \$4,700.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy. The Landlords are granted an Order of Possession and are granted a Monetary Order for the rent due as well as recovery of the filing fee.

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