



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL, OPR

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent and 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”), the Tenant, and the Tenant’s assistant (the “Assistant”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

Preliminary Matter #1

The Agent testified that since filing the Application, the amount of outstanding rent has increased. As a result, the Agent requested to amend their Application to include loss of rent for March 2018. 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. The Application was therefore amended to include outstanding rent for March 2018, pursuant to the *Act* and the Rules of Procedure.

Preliminary Matter #2

During the hearing the Assistant had to be cautioned not to use profanity, to speak respectfully, and not to interrupt. The Assistant was also advised that as he is not a party to the proceedings and is only present to assist the Tenant, he would be excluded from the proceedings if the behavior continued. The hearing proceeded and concluded without further incident.

Issue(s) to be Decided

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

Is the Landlord entitled to a Monetary Order for Unpaid Rent and recovery of the filing fee pursuant to section 67 and 72 of the *Act*?

Background and Evidence

Although a copy of the tenancy agreement was not before me for consideration, the parties agreed that the tenancy began approximately seven years ago and that rent in the amount of \$664.30 is due on the first day of each month.

The Landlord testified that when rent was not paid in full for January 2018, a 10 Day Notice was posted to the door of the Tenant's rental unit on January 22, 2018. Although the Tenant could not recall the exact date that she received the 10 Day Notice from her door, she did acknowledge receipt.

The 10 Day Notice in the documentary evidence before me, dated January 22, 2018, has an effective vacancy date of February 3, 2018, and states that as of January 1, 2018, the Tenant owed \$441.60 in outstanding rent.

Both parties agreed that the Tenant made one payment in the amount of \$443.70 on January 3, 2018, and that \$221.00 of that payment went towards outstanding rent for December, 2017. Both parties also agreed that no further rent has been paid.

The Tenant stated that she did not pay the rent as she was told by the Landlord prior to the issuance of the 10 Day Notice that she owed a higher amount for rent, and therefore wanted the Arbitrator to determine what was owed prior to making any payments. The Landlord acknowledged initially advising the Tenant of the incorrect outstanding rent

amount but stated that when the Tenant advised her that this amount was incorrect, she checked her records and issued the 10 Day Notice based on the correct amount of outstanding rent.

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.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was deemed served with the 10 Day Notice on January 25, 2018, three days after it was attached to the door of her rental unit. Based on the above deemed service date, I find that the effective date of the 10 Day Notice is incorrect as it is not at least 10 days after the date the Tenant received the 10 Day Notice. As a result, I find that the incorrect effective date is automatically corrected to February 5, 2018, pursuant to section 53 of the *Act*.

Based on the testimony and documentary evidence before me, I find that the Tenant was obligated to pay \$664.30 in rent on time and in full each month. I also find that the Tenant owes \$1,770.20 in outstanding rent; \$441.60 for January 2018, and \$664.30 per month for February and March 2018.

Although the Tenant argued that she did not file an Application due to a misunderstanding that attending the hearing for the Landlord's Application regarding the 10 Day Notice was not the same as filing her own Application, I find that it was incumbent upon the Tenant to know and understand her duties and obligations under the *Act*. Further to this, I am bound by the *Act* in rendering my decision which clearly states that a tenant who is served with a 10 Day Notice is conclusively presumed to have accepted that the tenancy is ended in accordance with the notice if they do not pay the overdue rent or file an Application within five days of receiving the 10 day Notice.

As the Tenant acknowledged that she has not paid any rent since the 10 Day Notice was served and did not file an Application to dispute the 10 Day Notice, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, February 5, 2018. As a result, the Landlord is therefore entitled to an Order of Possession. As the effective date of the 10 Day Notice has passed and the Tenant owes rent for January, February, and March of 2018, the Order of Possession will be effective two days after service on the Tenant.

As the Landlord was successful in their Application, I find that they are entitled to the recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. As a result, the Landlord is entitled to a Monetary Order in the amount of \$1,870.20 for outstanding rent and recovery of the filing fee.

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 \$1,870.20. 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: March 15, 2018

Residential Tenancy Branch