



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On February 15, 2018, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's direct request application for an *ex parte* dispute resolution hearing to a participatory hearing. The Interim Decision of the adjourned *ex parte* dispute resolution hearing explained that the landlord's application suffered from deficiencies in the submitted evidentiary material and therefore the matter could not be addressed through the direct request process.

Through the avenue of a participatory hearing, I have been delegated authority under the *Act* to consider the landlord's application for the following:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Preliminary Issue - Service of Dispute Resolution Hearing Package

The tenants stated that they had not been served by the landlord with the dispute resolution hearing package. Tenant T.S. testified that she received the February 15, 2018 Interim Decision as it had been mailed to the tenants by the Residential Tenancy

Branch (RTB) but that she had not received any information about the scheduled date and time for this hearing.

Tenant T.S. stated that she first became aware of the hearing when she called the RTB the morning of the hearing on April 23, 2018. Tenant T.S. testified that she had been reviewing paperwork previously received in relation to this matter, which led her to contact the RTB to clarify some information, and in speaking with RTB staff she was informed about the hearing.

I have reviewed the case notes and confirmed that the RTB received a telephone call reportedly from one of the tenants named in this application on the morning of the April 23, 2018 hearing, seeking an update on the status of the application. The caller was advised of the hearing and provided with the hearing teleconference information by the RTB staff.

The case notes also stated that the RTB previously received a telephone call reportedly from one of the tenants named in this application on March 20, 2018 seeking an update on the status of this application as the Interim Decision had been received but the hearing documents had not been served. At that time, the caller was provided with the date, time and access code for the hearing, as well as the dispute access website link by the RTB staff.

The landlord testified that he personally served both the tenants, each with individual dispute resolution hearing packages, at the rental unit on February 17, 2018 and provided the name of the person who witnessed the service. The landlord submitted as documentary evidence a signed witness statement which attests to the landlord having personally served the tenants at the rental unit on February 17, 2018. The landlord further testified that the packages served to the tenants contained the dispute resolution proceeding paperwork with information on the hearing date and four pages representing the documentary evidence that had been uploaded to the RTB dispute access website.

As detailed above, the parties provided conflicting testimony around service of the dispute resolution hearing documents. Page 11 of the RTB Policy Guideline #12 Service Provisions provides guidance on determining service when it is in dispute by the parties:

At the dispute resolution hearing, if service or the time frame for having responded is in dispute, an arbitrator may consider evidence from both the party receiving the document and the party serving the document to determine the

date of service and the calculation of time a respondent had for responding. S.71 (2)(b) gives an arbitrator the authority to order that a document has been sufficiently served for the purposes of the Act on a date the arbitrator specifies, upon consideration of procedural fairness and prejudice to the affected party.

Ultimately, the tenants were present at the hearing and aware of the nature of the application being determined, since this hearing was an adjournment from the February 15, 2018 direct request proceeding regarding the landlord's request for an Order of Possession and a monetary award for the amount of rent owing. The tenants testified that they had received the Notice of Direct Request Proceeding in relation to the direct request process on this same matter and confirmed that they had received the Interim Decision resulting from that process, which sets out the background and evidence provided by the landlord on this matter.

Weighing the evidence on a balance of probabilities, I am inclined to give slightly more weight to the evidence provided by the landlord as he provided a witness statement attesting to the service of the documents to the tenants.

For these reasons, I find that the Notice of Dispute Resolution Hearing was sufficiently served on the tenants on February 17, 2018 pursuant to section 71(2)(b) 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 award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

At the outset of the hearing and again provided as a reminder during the hearing, I explained to both parties that only evidence and testimony relevant to this application, which pertains to determining whether or not the landlord is entitled to an Order of Possession for unpaid rent and a monetary award for unpaid rent, would be considered.

Although both parties voiced grievances related to other points of contention in regards to the tenancy, I have turned my mind to all the documentary evidence and the testimony of the parties relevant to the current application only. Not all details of the respective submissions and/or arguments are reproduced here.

The parties agreed on the following facts. This six-month fixed-term tenancy began November 30, 2017. The monthly rent is \$1,500.00. The tenancy agreement provides that the rent is due on the first day of each month.

Tenant T.S. explained that \$1,250.00 of the tenants' rent is paid for through their combined monthly disability payments and shelter payments received from the Ministry. The remaining \$250.00 of rent is paid for through tenants' other personal income sources.

The landlord stated that he had served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) at the beginning of January 2018 but the application for an Order of Possession based on this notice was later dismissed by the RTB due to the notice not being completed correctly.

However, the landlord testified that at the time, he thought he would receive an Order of Possession, so on January 19, 2018, he contacted the Ministry of Social Development and Poverty Reduction (the Ministry) to report that he was in the process of evicting the tenants. The tenants allege that their shelter payments were stopped by the Ministry because of the information reported to the Ministry by the landlord on January 19, 2018 regarding his actions seeking to evict the tenants.

Tenant T.S. testified that upon receiving the first 10 Day Notice in January 2018, it was her understanding that she was not required to pay rent while awaiting adjudication on such a matter.

The parties agreed that the landlord served the tenants with a second 10 Day Notice on February 2, 2018. Tenant T.S. testified that the tenants did not pay the rent owing as stated on the 10 Day Notice nor did they dispute the notice within the five days granted under the *Act*. Tenant T.S. stated that the situation of being served with the notice was very stressful and although she had started to make an application to dispute the notice, she did not manage to submit the application.

Therefore, the tenants testified that they have not paid rent for the months of January, February or March 2018 as they awaited this hearing and waited for the landlord to contact the Ministry to ask for shelter payments to be made for the three months noted.

On March 1, 2018, the landlord submitted an Amendment to the Application for Dispute Resolution to increase the monetary award requested from \$1,500.00 to \$4,500.00. The landlord explained that the original application submitted through the direct request

process only referenced one month's rent owing in the amount of \$1,500.00 whereas there is now three months in arrears for January, February and March 2018 for a total amount owing of \$4,500.00.

Tenant T.S. alleged that the landlord did not serve her with notice of this amendment. I explained to both parties that in accordance with the RTB Rules of Procedure 4.2, when the amount of rent owing has increased since the time the application initially was filed, it is a circumstance that can reasonably be anticipated by the respondent, therefore the application may be amended through an oral request at the hearing and does not require an Amendment to an Application for Dispute Resolution to be filed or served. As a result, I allow the landlord's amendment.

The landlord testified that he has called the Ministry to request payment for rent. He stated that the Ministry gave him the impression that they would be sending out the shelter payments. There was no documentary evidence provided by either party regarding the Ministry's position on the status of the tenants' shelter payments.

Conflicting testimony was provided by the parties with the tenants stating that they have offered to make partial rent payments to the landlord but that he refused. The landlord testified that this was not accurate and that the tenants never offered to make partial rent payments.

Analysis

In considering this matter, I have reviewed the landlord's 10 Day Notice to ensure that the landlord has complied with the requirements of section 52 of the *Act*. I find that the 10 Day Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord's agent; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,500.00, as established in their agreed upon tenancy agreement.

Tenant T.S. acknowledged not paying rent upon receipt of the landlord's first 10 Day Notice served in January – a notice which is not being considered in this application but referenced to provide context. Tenant T.S. explained that it was her understanding that she was not required to pay rent while the matter was awaiting arbitration. The *Act* provides no such relief for persons, and section 26 of the *Act* states 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.”

I note the 10 Day Notice to End Tenancy for Unpaid Rent submitted into evidence clearly outlines at the top of the first page that the tenant may face eviction if the tenant does not pay the rent to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch. I also note that second page also states that if the tenant doesn't do either they are conclusively presumed to have accepted the end of the tenancy and they must move out.

No evidence was presented at the hearing that the tenant had a right under the *Act* to deduct all or a portion of the rent.

Section 46 of the *Act* provides, in part, the following:

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 accept the testimony provided by the landlord, which was confirmed by the tenants, that the tenants did not pay the full amount of rent identified as owing on the 10 Day Notice dated February 2, 2018 within five days of receiving the notice nor did the tenants apply to dispute the 10 Day Notice within five days of receiving the notice provided under section 46(4) of the *Act*.

In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of this tenancy on the stated effective date of the notice. In this case, this required the tenants to vacate the premises by February 12, 2018. As that has not occurred, I find that the landlord is entitled to an Order of Possession.

Based on the agreed upon testimony of both parties, I find the landlord is entitled to \$4,500.00 in unpaid rent for the months of January, February, and March 2018.

As the landlord was successful in his application, I do find that he is entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenants. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the Act, I find that the landlord is entitled to a Monetary Order in the amount of \$4,600.00 for unpaid rent and the recovery of the filing fee. Should the tenants 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.

The landlord is provided with these Orders in the above terms and the tenants must be served with these Orders as soon as possible.

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: May 1, 2018

Residential Tenancy Branch