



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNRL, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for Landlord stated that on March 02, 2018 the Application for Dispute Resolution, the Notice of Hearing, and a copy of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities were sent to the Tenant, via registered mail, at the service address noted on the Application. The Landlord submitted Canada Post documentation that corroborates this statement.

In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing. As these documents were properly served to the Tenant, the hearing proceeded in his absence.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent or utilities?

Background and Evidence

The Executor stated that:

- the owner of the rental unit passed away on September 15, 2016;
- he is the Executor of the owner's estate;
- the Tenant was living in the rental unit with the owner prior to her death, on the basis of a verbal tenancy agreement;
- the Tenant agreed to pay monthly rent of \$300.00 by the first day of each month;
- the rent was being paid directly to the owner of the rental unit by the Provincial Government;
- when the owner of the rental unit passed away the Tenant agreed to continue paying \$300.00 in rent to the Executor;

- the Tenant has paid no rent since the owner of the rental unit passed away;
- the Tenant currently owes \$5,450.00 in rent for the period ending on May 31, 2018; and
- the Tenant is still living in the rental unit.

The Agent for the Landlord stated that on February 07, 2018 he personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of the Notice to End Tenancy was submitted in evidence. This Notice declares that the Tenant must vacate the rental unit by February 17, 2018.

Analysis

The *Act* defines a landlord in relation to a rental unit, as any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

On the basis of the undisputed testimony I find that the owner of the rental unit permitted the Tenant to live in the rental unit in exchange for \$300.00 in monthly rent. I therefore find that the owner of the rental unit was the Tenant's Landlord as that term is defined by section a(i) of the above definition.

On the basis of the undisputed testimony I find that the owner of the rental unit has passed away and the Executor is the personal represent of her estate. I therefore find that the Executor is now the Landlord of the rental unit as that term is defined by section b of the above definition.

On the basis of the undisputed testimony I find that the Tenant still owes \$5,450.00 in rent for the period ending May 31, 2018. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$5,450.00 in outstanding rent to the Landlord.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*, was personally served to the Tenant on February 17, 2018.

Section 46 of the *Act* stipulates that a tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I grant the Landlord an Order of Possession.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective 1:00 p.m. on May 31, 2018. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$5,550.00, which includes \$5,450.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$5,550.00. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: May 10, 2018

Residential Tenancy Branch