



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOCIETY OF HOUSING OPPORTUNITIES & PROGRESSIVE
EMPLOYMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MNR OPR FF
 Tenant: CNR CNC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on April 23, 2018 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on April 12, 2018 (the “Tenant’s Application”). The Tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 4, 2018 (the “10 Day Notice”), pursuant to the *Act*.

The Landlord was represented at the hearing by S.S. an agent, who was accompanied by W.P., who did not participate in the hearing. The Tenant attended the hearing on her own behalf. Both S.S. and the Tenant provided affirmed testimony.

The Landlord testified the Landlord’s Application package was served on the Tenant by registered mail. However, when it was not collected by the Tenant, the Application package was served in person on May 17, 2018. The Tenant acknowledged receipt on that date. I find the Tenant was served with the Landlord’s Application package on May 17, 2018.

The Tenant testified the Tenant's Application package was served at the Landlord's office. Although the Tenant was unable to confirm a date for service, S.S. confirmed receipt on April 12, 2018. I find the Landlord was served with and received the Tenant's Application package on April 12, 2018. In addition, the Tenant submitted an Amendment to an Application for Dispute Resolution to the Residential Tenancy Branch on April 12, 2018 (the "Amendment"). The Amendment purported to dispute a notice to end tenancy for cause. The Tenant could not recall serving the Amendment on the Landlord, and S.S. confirmed it was not received by the Landlord. However, for the reasons that follow I find it has not been necessary to consider this aspect of the Tenant's application.

The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to recover the filing fee?
4. Is the Tenant entitled to an order cancelling the notice to end tenancy for unpaid rent or utilities?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It indicated the tenancy began on November 1, 2011, although the Tenant testified the tenancy began on November 23, 2011. Currently, rent in the amount of \$835.00 per month is due on the first day of each month. The tenancy agreement includes provision for a late payment fee of \$20.00. The tenancy agreement confirmed the Tenant paid a security deposit in the amount of \$346.00.

On behalf of the Landlord, S.S. testified the Tenant did not pay rent when due on April 1, 2018. Accordingly, the Landlord issued the 10 Day Notice. The Tenant's Application confirmed receipt of the 10 Day Notice on April 4, 2018. At that time, the rent and late fee totalled \$840.00. According to the Landlord, rent was also not paid when due on

May 1 and June 1, 2018. The Landlord also sought to recover late fees for May and June. Currently, outstanding rent and late fees total:

Month	Rent due	Late fee	Outstanding
Apr. 1, 2018	\$820.00	\$20.00	\$840.00
May 1, 2018	\$835.00	\$20.00	\$855.00
Jun. 1, 2018	\$835.00	\$20.00	\$855.00
TOTAL:			\$2,550.00

In reply, the Tenant acknowledged rent has not been paid as alleged. However, she testified that a “development centre” was to pay her rent for the month of April 2018, and that she was unaware rent had not been paid until May 11, 2018. Further, the Tenant testified that the Landlord was provided with new banking information and should have deducted the amount owed. In response, S.S. testified that when an automatic payment is returned NSF, as it was in April 2018, tenants must pay rent in another way.

Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

In this case, the Landlord testified that rent and late fees in the amount of \$2,550.00 are currently outstanding. The Tenant acknowledged rent was not paid when due and suggested the Landlord had an obligation to collect rent. I find there is insufficient evidence before me to conclude the Tenant had a right under the *Act* to deduct rent. Accordingly, I find that rent was not paid when due and that the Landlord has demonstrated an entitlement to a monetary award of \$2,550.00. Having been successful, I also find the Landlord is entitled to recover the filing fee paid to make the Landlord’s Application. I grant the Landlord a monetary order in the amount of \$2,650.00, which is comprised of \$2,550.00 in unpaid rent and \$100.00 in recovery of the filing fee.

In addition, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

Conclusion

The Tenant's Application is dismissed, without leave to reapply.

The Landlord is granted a monetary order in the amount of \$2,650.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: June 13, 2018

Residential Tenancy Branch