



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNDCL, MNR, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent issued on July 2, 2018 (the "Notice") as well as to recover the filing fee.

The hearing was conducted by teleconference on August 7, 2018. The Landlord's Property Manager, D.H., the Tenant, and the Tenant's Nephew and Advocate, D.D. called into the hearing. All present were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective 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. Is the Landlord entitled to an Order of Possession and monetary compensation for unpaid rent?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Property Manager testified as follows.

He stated that the tenancy has been for approximately 22 years. He further stated that at the time of issuing the Notice, rent was payable in the amount of \$889.00 in addition to \$30.00 for parking for a total of \$919.00 per month payable on the first of the month.

Introduced in evidence was a copy of a formal Notice of Rent Increase in 2018; the Property Manager confirmed he erroneously noted the increase would take place on August 1, 2017, not 2018 as required. He conceded that this increase was not as a result of the incorrect year.

The Property Manager testified that the Tenant did not pay rent for July 1, 2018 and as such he issued the Notice on July 2, 2018. The Notice indicated that the sum of \$919.00 was due on July 1, 2018.

The Tenant paid rent on July 24, 2018 in the amount of \$889.00. The Property Manager confirmed he did not accept this payment as the Tenant paid rent 24 days late. He also stated that this was not the first time she was late paying rent and he was instructed by his employer (the Landlord) to refuse the late payment.

In response to the Landlord's submissions the Tenant testified as follows.

The Tenant stated that she provided the Landlord with post-dated cheques up to and including the end of July 1, 2018. She stated that she was going to give him new cheques on August 1, 2018 as she believed that was when her rent increased. She did not provide a copy of the July 1, 2018 rent cheque.

The Tenant further stated that she attempted to pay \$789.00 to the Landlord on July 24, 2018 because she realized that the Property Manager did not cash her July 1, 2018 cheque. She stated that she provided this amount as in a previous hearing (the file number is noted on the unpublished cover page of this my Decision) she was awarded \$100.00 for her filing fee. She also reduced the amount by \$30.00 as she does not use her parking space as she rarely resides at the rental unit.

Introduced in evidence was a copy of two cheques written by the Tenant: one dated July 24, 2018 in the amount of \$789.00 and one dated July 31, 2018 in the amount of \$889.00; the Tenant confirmed that the Landlord did not cash either cheque.

The Tenant's Nephew testified as follows. He confirmed that the Tenant did not receive the eviction notice until approximately "two weeks into July" as she has a "medical reason why she is not in the rental unit". He referred me to the Decision of July 11, 2018 wherein the Arbitrator recorded the following:

"...the Tenant acknowledged she has not been in the rental unit consistently for about 2 years. The Tenant also testified she lives with her brother because she requires assistance while she awaits hip replacement surgery. The Tenant's health concerns

were supported by a letter from the Tenant's physician, dated July 7, 2018. Further, the tenant confirmed she rented a room in her apartment to M.A. for \$550.00 per month but denied she sublet the apartment. She testified she slept on the couch when she was there. Further, D.D. testified that the Tenant return to the rental unit at regular intervals while M.A. lived there.

The Tenant's Nephew also stated that not once did the Landlord raise the issue of the non-payment of rent at the July 11, 2018 hearing.

The Tenant's Nephew further testified that she has paid rent by post-dated cheque for 22 years. He stated that she did not notice that her account had a credit as she did not look at her bank balance. He also stated that the Tenant did not apply to dispute the Notice as they were informed by the Residential Tenancy Branch that it was too late to make an application.

In reply the Property Manager stated that the Tenant did not pay her rent by post-dated cheques, rather she would drop the rent in his mailbox on the 1st or the 2nd of the month in the morning. He also stated that when he did not receive the Tenant's July rent payment by July 2nd, he posted the Notice to the rental unit door.

The Property Manager further stated that he has difficulty communicating with the Tenant because she doesn't live in the building and won't answer her phone.

Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

The Property Manager testified that the Tenant failed to pay her July 2018 rent as and when required on July 1, 2018. The Tenant's nephew testified that she paid rent by post-dated cheques and the Property Manager simply failed to cash her July 1, 2018 cheque. Although the Tenant's nephew alleged the Tenant had paid her rent by post- dated cheque for 22 years, there was no supporting documentary evidence of the July 1, 2018 cheque, nor any evidence of previous payments before me, such as cancelled cheques. I find the Tenant has submitted insufficient evidence to support her claim that she paid her rent by post-dated cheques and the Landlord failed to cash her July 2018 cheque.

I accept the Property Manager's testimony that the Tenant dropped her payments off on a monthly basis by depositing them in his mail slot. I further accept his evidence that when this payment was not received he posted the Notice to the rental unit door.

The Tenant's nephew submitted that the Landlord made no mention of the outstanding rent at the July 11, 2018 hearing. Notably, the payment of rent was not at issue at that hearing and therefore I find it reasonable that the July 2018 rent payment would not have been addressed at

the hearing, and even had it been discussed, I also find it reasonable that it was not recorded in the Decision as it was not relevant to the issues before the presiding Arbitrator. In any case, I am not persuaded by the Tenant's submissions in this regard.

I accept the Landlord's evidence that the Tenant was served the 10 Day Notice to end Tenancy for Unpaid Rent by posting to the rental unit door on August 2, 2018. Section 90 of the *Residential Tenancy Act* provides that documents served in this manner are deemed served three days later; for greater clarity I reproduce that section as follows:

When documents are considered to have been received

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*], unless earlier received, is deemed to be received as follows:

- (a) if given or served by mail, on the 5th day after it is mailed;
- (b) if given or served by fax, on the 3rd day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
- (d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the 3rd day after it is left.

As such, and pursuant to section 90(c) I find that the Tenant was deemed served the 10 Day Notice on July 5, 2018.

Section 46(4) of the *Act* provides that a Tenant has five days from service of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in which to pay the outstanding rent (as provided for on the Notice) or make an Application for Dispute Resolution. As the Tenant is deemed served on July 5, 2018, I find that she had until July 10, 2018 in which to pay the outstanding rent or make her Application. The evidence confirms the Tenant failed to pay the outstanding rent or make her application within the strict time lines imposed by section 46.

As such, and pursuant to section 46(5) the Tenant is conclusively presumed to accept the end of the tenancy.

Accordingly, and pursuant to section 55 of the *Act* I grant the Landlord's request for an Order of Possession. This Order shall be effective two days after service on the Tenant and may be filed and enforced in the B.C. Supreme Court.

As noted in the July 12, 2018 Decision the Tenant suggested rent was \$916.00 per month due on the first of the month. At the hearing before me, the evidence confirmed rent was \$889.00 per month in addition to \$30.00 for parking. The evidence also confirmed that the Tenant

attempted to pay \$789.00 on July 24, 2018 and \$889.00 on July 31, 2018; these amounts suggest the Tenant was deducting \$30.00 for the parking as well as the \$100.00 filing fee which was awarded to her in the July 12, 2018 Decision. During the hearing the Property Manager confirmed he was not seeking compensation for the \$30.00 per month charge for the July and August parking.

I find the Tenant failed to pay rent as required and pursuant to sections 67 and 72 of the *Act* I award the Landlord a Monetary Order in the amount of **\$1,778.00** ($\$889.00 \times 2 = \$1,778.00 - \100.00 (awarded to the Tenant pursuant to the July 12, 2018 Decision) + \$100.00 (the Landlord's entitlement to recovery of the \$100.00 filing fee for the hearing before me). This Monetary Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Tenant failed to pay the rent or make an Application for Dispute Resolution within five days of deemed service of the Notice. The Tenant is conclusively presumed to accept the end of the tenancy pursuant to section 46 of the *Act*.

The Landlord's Application for an Order of Possession and Monetary compensation for unpaid rent and recovery of the filing fee is granted.

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: August 08, 2018

Residential Tenancy Branch