



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GURDEV HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, OPR, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for a Monetary Order for unpaid rent and for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) and the Tenant were both present for the teleconference hearing. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Tenant did not submit any evidence prior to the hearing.

Both parties were affirmed to be truthful in their testimony and were provided with the opportunity to present testimony and respond to the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement that the tenancy began on March 15, 2018. Monthly rent in the amount of \$500.00 is due on the first day of each month. A security deposit in the amount of \$250.00 was paid at the outset of the tenancy.

The Landlord provided testimony that on May 2, 2018, he served the Tenant with a 10 Day Notice signed on May 1, 2018. The 10 Day Notice was served to the Tenant in person, as well as posted on her door. The Landlord submitted 10 Day Notice into evidence, along with a photo of the notice posted on the Tenant's door.

The 10 Day Notice stated that rent in the amount of \$500.00 was unpaid when due on May 1, 2018. The Tenant testified that she received the 10 Day Notice on May 2, 2018. She confirmed that she did not apply to dispute the notice.

The Landlord stated that rent was unpaid for May, June, July and August 2018 and that he has not received any partial payments towards the rent owing. The Tenant agreed that rent is unpaid for May, June, July and August 2018.

The Tenant testified that on the evening of May 11, 2018, the Landlord sent someone to her house to physically remove her from the home. She stated that she has not been comfortable around the agent for the Landlord since that time and does not trust him. She advised that she had told the Landlord previously that she would have the rent for May on May 12, 2018, but since the incident she has not been comfortable paying the rent to him.

The Landlord testified that he did not hire anyone to go to the Tenant's home. He stated that he has attended the home many times to collect the rent and the Tenant would tell him that she would have the money for him soon, but he has not received any amount since rent was paid in April 2018.

The Landlord also stated that there are many ways to pay the rent without having to deal with him if the Tenant did not want to. He suggested that she could have paid the rent by dropping it off at the office, as she did in April 2018. The Tenant stated that she did not know where the office was and that she usually paid rent by cash or cheque

given to the agent for the Landlord in person. She stated that as she no longer trusts the agent, she had not attempted to pay rent.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

I refer to Sections 46(4) and 46(5) of the Act which state:

- (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.

The parties were in agreement that since the issuance of the 10 Day Notice, no amount has been paid towards the rent owing. The Tenant also stated that she did not apply to dispute the 10 Day Notice. As such, I find that Section 46(5) of the *Act* applies and the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, May 12, 2018.

Although the Tenant stated that she was not comfortable dealing with the agent for the Landlord, I find that there were alternate ways to pay the rent and do not find any evidence that the Tenant attempted to pay the rent for the past four months.

I also note that Section 26(1) of the *Act* states the following:

- 26 (1) 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 find no evidence before me that the Tenant had reason under the *Act* to withhold the rent. As such, I find the Tenant was required to continue paying rent as due on the first on the month.

Therefore, based on the above, I grant a two day Order of Possession to the Landlord, pursuant to Section 55 of the *Act*. This Order must be served on the Tenant.

I also find that the Landlord is entitled to compensation for the unpaid rent, pursuant to Section 67 of the *Act*. Although the Landlord initially applied for compensation for three months of rent, I find that the Tenant would reasonably expect that an additional month was owing based on when the hearing was scheduled and that rent remained unpaid. Therefore, I amend the Landlord's application to include a claim for August 2018 rent, pursuant to Section 64(3)(c).

As the Landlord was successful in their application, I also award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*.

In accordance with Section 72(2) of the *Act*, the Landlord may withhold the security deposit towards the total amount owing. A Monetary Order will be issued to the Landlord in the amount outlined below.

May 2018 rent	\$500.00
June 2018 rent	\$500.00
July 2018 rent	\$500.00
August 2018 rent	\$500.00
Filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$250.00)</i>
Total owing to Landlord	\$1,850.00

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant 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 Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,850.00** for rent owed for May, June, July and August 2018 and for the recovery of the filing fee for this application. 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: August 17, 2018

Residential Tenancy Branch