



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

BRIGHTSIDE COMMUNITY HOMES FOUNDATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR

Introduction

On September 11, 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*, and
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:45 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:00 p.m. The landlord's agent A.F. (herein referred to as "the landlord") attended the hearing on behalf of the housing foundation landlord and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that they had served the tenant with the Notice of Dispute Resolution Proceeding for this hearing.

The landlord testified that the tenant was served with the notice of this hearing and the Interim Decision dated September 11, 2018 by Canada Post registered mail on September 18, 2018. The landlord provided the registered mail tracking number as proof of service. With the landlord's agreement, I accessed the Canada Post website to confirm that the notice of this hearing had been delivered and signed as received by the tenant on September 25, 2018. Therefore, I find that the tenant was served with the notice of this hearing in accordance with section 89 of the *Act*.

Preliminary Issue – Amendment of Landlord's Application

At the outset of the hearing, the landlord advised that the amount of unpaid rent of \$320.00 claimed in the application was only up to the end of August 2018. The landlord requested to amend the application to include unpaid rent for the additional months of September and October 2018, at a monthly rent of \$320.00. Therefore, the landlord requested a total claim of \$960.00 [3 x \$320.00] in unpaid rent. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's application to reflect the monetary claim for the full amount of unpaid rent of \$960.00 for the months of August, September and October 2018, since the tenant continues to reside in the rental unit and can reasonably have anticipated that they would be held responsible for this rent payment.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The landlord submitted a written tenancy agreement into documentary evidence, and provided the following unchallenged information pertaining the tenancy agreement:

- This month-to-month tenancy began on December 1, 2005.
- Monthly rent of \$320.00 is due on the first of the month.

- The landlord does not believe that the tenant paid a security deposit at the beginning of the tenancy because it is not recorded on the written tenancy agreement.

The landlord testified that the tenant failed to pay rent for August 2018 when it was due on August 1, 2018. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) dated August 13, 2018 by Canada Post registered mail on August 13, 2018. The landlord provided the registered mail tracking number as proof of service. With the landlord's agreement, I accessed the Canada Post website to confirm that the 10 Day Notice had been delivered and signed as received by the tenant on August 17, 2018. Therefore, I find that the tenant was served with the 10 Day Notice in accordance with section 88 of the *Act*.

The landlord submitted a copy of the 10 Day Notice into documentary evidence. The notice stated an effective date for vacancy of the rental unit of August 24, 2018. I explained to the landlord that since the tenant received the notice on August 17, 2018 by registered mail, the effective date for vacancy is required to be 10 days from the date the tenant receives the notice. In accordance with section 53 of the *Act*, an incorrect effective date on a notice to end tenancy automatically corrects to the earliest date that complies with the *Act*, which in this case is August 27, 2018.

The landlord testified that the tenant did not pay any rent within five days of receiving the 10 Day Notice. Further to this, the landlord testified that the tenant has not paid any rent for the month of August, September or October 2018. The tenant is currently in rental arrears totalling \$960.00.

There was no evidence before me that the tenant applied to dispute the landlord's 10 Day Notice within five days of receipt.

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.

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

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.

Therefore, based on the unchallenged testimony of the landlord regarding the terms of the tenancy agreement, I find that the tenant was obligated to pay monthly rent in the amount of \$320.00, as established in the agreed upon tenancy agreement, and that the tenant failed to pay rent for the months of August, September and October 2018.

In light of the above, I find that the landlord is entitled to a monetary award in the amount of \$960.00 for unpaid rent owing for the months of August, September and October 2018.

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 note that the 10 Day Notice 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 states that if the tenant does not do either, they are conclusively presumed to have accepted the end of the tenancy and they must move out.

In this matter, the landlord served the tenant with the 10 Day Notice by Canada Post registered mail. The registered mail tracking report stated that the notice was delivered and signed for by the tenant on August 17, 2018.

I accept the testimony provided by the landlord that the tenant did not pay the amount of rent identified as owing on the 10 Day Notice nor did the tenant apply to dispute the 10

Day Notice within five days of receiving the notice, as provided under section 46(4) of the *Act*.

In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of this tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by August 27, 2018. As that has not occurred, and the effective vacancy date has passed, I find that the landlord is entitled to an Order of Possession effective two days after service on the tenant.

Conclusion

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant. Should the tenant 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.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$960.00 in satisfaction of my finding that the landlord is entitled to a monetary award for unpaid rent owing for the months of August, September and October 2018. 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.

The landlord is provided with these Orders in the above terms and the tenant 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: October 18, 2018

Residential Tenancy Branch