



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL

Introduction

On July 13, 2018, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession for unpaid rent pursuant to Section 46 of the *Residential Tenancy Act* (the “*Act*”) and seeking a Monetary Order for Unpaid Rent pursuant to Section 67 of the *Act*.

The Tenant attended the hearing at the designated start time; however, the Landlord did not appear. After ten minutes, the Landlord had not called into the Dispute Resolution proceeding and I advised the Tenant that as the Applicant has not attended his own hearing, I would be dismissing the Application. In light of this, the Tenant asked questions regarding how the tenancy continues. However, at 9:46 AM, the Landlord called into the hearing and advised that it was his belief that he would be contacted with respect to this hearing. As the Landlord had now attended the hearing, and as the hearing was still open, the hearing commenced at 9:48 AM. Both parties provided a solemn affirmation.

The Landlord advised that the Notice of Hearing package was served to the Tenant by hand on July 13, 2018 and the Tenant confirmed receipt of this package. As well, the Landlord advised that he served the Tenant his evidence by placing it in the Tenant’s mailbox, and the Tenant confirmed receipt of this. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenant was served the Notice of Hearing package and evidence. The Tenant confirmed that she did not submit any evidence for this hearing.

In accordance with Rule 3.19 of the Rules of Procedure, an Arbitrator may provide direction on requesting late evidence. A copy of the 10 Day Notice to End Tenancy for

Unpaid Rent (the “Notice”) that is the subject of this dispute was requested as it is essential to the matter at hand, and it was not submitted into evidence by either party. The Notice was sent in by fax after the hearing by the Landlord.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The Landlord stated that he purchased the house in February 2015 and assumed the Tenant and the existing tenancy agreement. According to the testimony of both parties, rent was increased in accordance with the *Act* and as of July 1, 2018, rent was due in the amount of \$1,195.00 per month. Rent was due on the first of each month, and a security deposit of \$575.00 was transferred to the Landlord from the previous owners of the rental unit.

The Landlord submitted that the Tenant had not paid July 2018 rent in full and referenced his evidence of electronic transfers from the Tenant of \$650.00 on July 3, 2018 and \$500.00 on July 13, 2018. He stated that he served the Notice to the Tenant on July 3, 2018 by hand and the Tenant confirmed receiving this Notice. The Notice indicated that \$1,195.00 was outstanding on July 1, 2018 and the effective end date of the Notice was July 14, 2018.

The Tenant confirmed that she was aware that rent for July 1, 2018 was due on the first of the month in the amount of \$1,195.00 and she also confirmed she made two electronic transfers to the Landlord of \$650.00 on July 3, 2018 and \$500.00 on July 13, 2018. She also stated that she had difficulty paying the Landlord as he would only accept cash payments for rent and that he did not issue her receipts either. In addition,

she advised that she had made overpayments of rent in the past, but she had no evidence of such.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

As outlined above, the undisputed evidence is that the rent for July 2018 was not paid in full when it was due, nor was it paid within five days of the Tenant being served the Notice. In addition, the undisputed evidence is that the Tenant did not dispute the Notice. While there was some debate over how rent was able to be paid, the undisputed evidence before me is that the Tenant had been paying rent by electronic transfer for the months of June, July, and August 2018 without issue. Furthermore, without any evidence that the Tenant had made prior overpayments of rent, the evidence before me is that the Tenant did not pay July 2018 rent in full within the five days of being served the Notice. As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession.

I also find that the Landlord is entitled to compensation for unpaid rent. As such, I award the Landlord a monetary award in the amount of **\$45.00**, which is the balance of July 2018 that is in arrears.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of the July 2018 rent arrears and the filing fee debts outstanding.

Conclusion

I grant an Order of Possession to the Landlord **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.

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: September 10, 2018

Residential Tenancy Branch