



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTGATE CAPITAL INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, 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.

The application was originally filed under the Direct Request process, but was scheduled for a participatory hearing due to the absence of a tenancy agreement.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, while no one called in for the Tenant during the approximately 10-minute hearing. As the Tenant was not present, service of the Notice of Dispute Resolution Proceeding (the “Notice of Hearing”) was addressed.

The Landlord provided affirmed and undisputed testimony that the Notice of Hearing documents and copies of the Landlord’s evidence was sent to the Tenant by registered mail. As such, I find that the Tenant was duly served with the Notice of Hearing in accordance with the *Act*.

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

Should the Landlord be granted 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 allowed to retain the security deposit towards compensation owed?

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

Background and Evidence

The Landlord provided undisputed testimony regarding the tenancy. The tenancy began on October 1, 2016. Monthly rent is \$1,050.00, due on the first day of each month. A security deposit of \$525.00 was paid at the outset of the tenancy and the Landlord remains in possession of the security deposit. The Landlord testified that there is no tenancy agreement on their files due to a change in property managers, but that the tenancy was a fixed term that transitioned into a month-to-month tenancy.

On August 6, 2018, the Tenant was served with a 10 Day Notice by posting it on the door of the rental unit. The 10 Day Notice was submitted into evidence and notes outstanding rent in the amount of \$2,100.00. The effective end of tenancy date of the 10 Day Notice was stated as August 17, 2018.

The Landlord testified that rent was not paid for July, August or September 2018. They also stated that no partial payments towards the amount owing had been made since the issuance of the 10 Day Notice. The statement of account was submitted into evidence and shows an amount of \$2,100.00 outstanding as of August 1, 2018. As September 2018 rent was also unpaid, the total amount owing is \$3,150.00.

The Landlord stated that she became aware of another hearing regarding this tenancy, but was unsure of the date. She was advised to call the Residential Tenancy Branch to confirm the details. The Landlord provided a file number during the hearing and it appeared that the hearing date had passed and neither party attended the hearing, leading to the application being dismissed. The hearing was the Tenant's application to cancel the 10 Day Notice.

The Landlord stated that the Tenant has moved out as of September 20, 2018. However, she noted that the keys had not yet been returned and that the rental unit may not be completely empty. As such, the Landlord is still requesting an Order of Possession.

Analysis

Based on the undisputed testimony of the Landlord, I find that the 10 Day Notice issued on August 6, 2018 was issued in accordance with Section 46 of the *Act*. As per Section 46(4), after receiving a 10 Day Notice, a tenant has 5 days in which to dispute the notice or to pay the outstanding rent.

I accept the testimony of the Landlord that the outstanding rent was not paid. I also find that although there is evidence that the Tenant applied to cancel the notice, as the Tenant did not attend the hearing to dispute the notice, the application was dismissed and the 5 days in which to file the application has since passed.

As the Tenant did not dispute the notice or pay the rent owing within the 5 days allowable under the *Act*, I find that Section 46(5) of the *Act* applies. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

Pursuant to Section 55(2) of the *Act*, I issue the Landlord a two-day Order of Possession.

Although the Landlord applied for July and August 2018 rent only at the time of Application, as September rent was also unpaid, I accept the Landlord's request to amend the Application for Dispute Resolution and amend the application pursuant to Section 64(3)(c) of the *Act*.

Based on the testimony and evidence of the Landlord, I find that an amount of \$3,150.00 remains unpaid. As the Landlord was successful in their application, I grant the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*.

Pursuant to Section 38(4), the Landlord may retain the \$525.00 security deposit towards the total amount owing. A Monetary Order will be granted to the Landlord in the amount outlined below:

| | |
|------------------|------------|
| July 2018 rent | \$1,050.00 |
| August 2018 rent | \$1,050.00 |

| | |
|--------------------------------|-------------------|
| September 2018 rent | \$1,050.00 |
| Recovery of filing fee | \$100.00 |
| <i>Less Security deposit</i> | <i>(\$525.00)</i> |
| Total owing to Landlord | \$2,725.00 |

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 **\$2,725.00** for rent owed for July, August and September 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: September 27, 2018

Residential Tenancy Branch