Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAMARGUE INVESTMENTS
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 monetary compensation for unpaid rent, and for the recovery of the filing fee paid for this application.

The application was initially filed under the Direct Request process, but was adjourned to a participatory hearing to confirm service of the 10 Day Notice.

An agent for the Landlord (the "Landlord") and the Tenant were present for the duration of the teleconference hearing. Both parties were affirmed to be truthful in their testimony.

The Tenant confirmed that she received the Notice of Dispute Resolution Proceeding package in person, along with copies of the Landlord's evidence. The Tenant did not submit any evidence prior to the hearing. I find that the Notice of Dispute Resolution Proceeding package and evidence package was duly served in accordance with Sections 88 and 89 of the *Act.*

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch 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 as to the details of the tenancy. The tenancy began on September 2, 2014. Monthly rent is currently $905.00, after a rent increase that took effect in September 2018. Prior to this, the monthly rent was $871.00. A security deposit of $400.00 and a pet damage deposit of $400.00 was paid at the outset of the tenancy.

On August 2, 2018, the Landlord served the Tenant with a 10 Day Notice by posting it on her door. The Tenant confirmed receipt of the 10 Day Notice on August 2 or August 3, 2018. The Tenant did not apply to dispute the 10 Day Notice.

The 10 Day Notice stated that rent in the amount of $871.00 that was due on August 1, 2018 was not paid. However, the Landlord noted that there was some rent owing prior to August as well, but he had only indicated August rent on the 10 Day Notice. The Landlord stated that the only payments towards rent he has received since then are a payment of $400.00 on September 22, 2018 and a payment of $871.00 on October 19, 2018.

The Tenant was in agreement as to the amount of unpaid rent and the partial payments towards the rent owing. She also agreed that she owed some rent from July 2018. Both parties confirmed that an amount of $1,881.00 was still owing to the Landlord.

The Landlord was willing to provide a bit more time for the Tenant to pay the outstanding rent, but would like an Order of Possession to serve to the Tenant should she not pay the rent within a reasonable timeframe.

Analysis

I refer to Section 46(4) of the *Act,* which states that a tenant has 5 days to pay the rent owing or apply to dispute a 10 Day Notice. I accept the testimony and evidence of both parties that the Tenant did not apply to dispute the 10 Day Notice within the 5 days

provided under the *Act,* and also has not paid the rent owing. While there were some partial payments towards the rent owing, the total outstanding amount was not paid within the 5 days allowable under the *Act.*

Therefore, I find that Section 46(5) applies, and the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice; August 12, 2018.

Upon review of the 10 Day Notice submitted into evidence, I find it in compliance with Section 52 of the *Act.* Therefore, I find that Section 55(2) applies, and the Landlord is entitled to an Order of Possession. I issue an Order of Possession to the Landlord that is effective two days after service on the Tenant. The Landlord may serve this Order right away, or as indicated during the hearing, may choose to provide more time to the Tenant prior to serving the Order.

Both parties were in agreement that an amount of $1,881.00 is still owing to the Landlord for unpaid rent. A Monetary Order for this amount is awarded to the Landlord.

As the Landlord was successful in this Application, I also award the recovery of the filing fee in the amount of $100.00, pursuant to Section 72 of the *Act.* Pursuant to Section 72(2), the Landlord may retain $100.00 from the security deposit in full satisfaction of the filing fee.

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 Section 67 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **$1,881.00** for outstanding rent 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.

Pursuant to Section 72 of the *Act,* the Landlord may retain $100.00 from the security deposit to recover the filing fee paid for the Application for Dispute Resolution.

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 23, 2018

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Residential Tenancy Branch