



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW VISTA SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN MNRL-S FF

Introduction

This hearing was convened in response to applications by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- an Order of Possession pursuant to section 55 of the *Act*;
- a return of the filing fee pursuant to section 72; and
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*;

Only the landlord’s agent, T.W. (the “landlord”) attended the hearing by way of conference call which lasted approximately ten minutes. The landlord was given full opportunity to be heard, to present evidence and to make submissions.

The landlord explained the tenant had passed away in August 2018 and her son had given written notice of his intention to leave the suite vacant for September 30, 2018. Following receipt of this notice the landlord did not receive any further correspondence from the tenant’s son who began occupying the unit. It is on this basis that the landlord sought an Order of Possession.

The landlord gave undisputed testimony that on October 23, 2018 a copy of the Application for Dispute Resolution as well as the evidentiary package was sent to the tenant’s estate by way of Canada Post Registered Mail. A copy of the Canada Post Registered Mail tracking number was provided to the hearing. Pursuant to sections 88, 89 and 90 of the *Act*, the tenant’s estate was deemed served with the dispute resolution hearing and evidentiary packages on October 28, 2018, five days after their posting.

Following opening remarks, the landlord asked to amend her application to reflect unpaid rent for October and November 2018. As the tenant’s son continues to occupy the rental unit and rent remains unpaid, pursuant to section 64(3)(c), I amend the

landlord's application for a monetary award to include unpaid rent of \$1,290.00 for October and November 2018.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Can the landlord recover unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

Undisputed testimony provided by the landlord explained this tenancy began on November 1, 2012. Subsidized rent of \$504.00 was paid monthly. A security deposit of \$270.00 paid at the outset of the tenancy continues to be held by the landlord. The landlord said rent for the unit when it is not subsidized is \$645.00 per month.

In late August 2018 the tenant passed away. In September 2018 the tenant's son began to clear her belongings from the unit and paid rent of \$400.00 for September 2018. The tenant's son provided the landlord with a written intention to vacate the suite by September 30, 2018. After having provided the landlord with this written notice, the tenant's son ceased communication with the landlord and began occupying the suite himself. The landlord explained the tenant's son was last known to be in the unit on October 22, 2018. The landlord said repeated attempts to communicate with the tenant's son had failed, and no person had answered the door when efforts were made to personally speak with the tenant's son at the rental unit.

Analysis

Residential Tenancy Policy Guideline #12 states as follows, "where a party to an application for dispute resolution is deceased, the personal representative of the deceased's estate should be named. If the deceased is a respondent to an application, the personal representative should be named and served. If the application does not know the name of the deceased's personal representative at the time of filing an application for dispute resolution, the deceased's name can be filled in on the application (e.g. John Doe, deceased)." Pursuant to *Policy Guideline #12*, I find the landlord has named the appropriate party to the dispute and will therefore be granted a monetary award pursuant to section 67 of the *Act* for unpaid rent of \$1,394.00. This

figure represents unpaid rent for September 2018 of \$104.00, along with unpaid rent for October and November 2018 of \$1,290.00. I accept the landlord's undisputed testimony that the tenant's son continues to occupy the rental unit and has failed to pay rent for the time in which he has been in occupation of the rental unit.

The second portion of the landlord's application relates to an Order of Possession. Section 55(2) of the *Act* states as follows, "A landlord may request an order of possession of a rental unit if a notice to end the tenancy has been given by the tenant. The landlord provided undisputed testimony that the tenant's son had given written notice to the landlord informing them of his intention to vacate the suite for September 30, 2018. A copy of this signed document was provided to the hearing as part of the landlord's application for dispute. I find the tenant's son has failed to vacate the suite in accordance with the written notice provided to the landlord. The landlord is therefore entitled to an Order of Possession pursuant to section 55(2) of the *Act*.

As the landlord was successful in her application, she may recover the \$100.00 filing fee from the tenant.

Using the offsetting provisions contained in section 72 of the *Act*, the landlord may retain the tenant's security deposit in partial satisfaction for a return of the monetary award.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

I make a Monetary Order of \$1,224.00 in favour of the landlord as follows:

Amount	Item
Unpaid rent for September 2018	\$104.00
Unpaid rent for October 2018	645.00
Unpaid rent for November 2018	645.00
Return of Filing Fee	100.00
Less Security Deposit	(-270.00)
Total =	\$1,224.00

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: November 27, 2018

Residential Tenancy Branch