



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPR MNRL FFL
For the tenants: CNR OLC FFT

Introduction

This hearing was convened as a result an Application for Dispute Resolution (“application”) by both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee. The tenant applied to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 3, 2018 (“10 Day Notice”), for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

Tenant PS (“tenant”), an agent for the landlord TR (“agent”) and a property manager for the landlord EC (“property manager”) attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all 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.

Neither party raised any concerns regarding the service of documentary evidence. Both parties confirmed that they were served with the application from the other party, and that they had the opportunity to review the documentary evidence served upon them prior to the hearing.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

In addition to the above, the name of the corporate landlord was corrected as it was filed with an obvious spelling error. This amendment was made in accordance with section 64(3) of the *Act*.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Should the 10 Day Notice be cancelled or upheld under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- If the tenancy is ending, is the remainder of the tenant's application moot?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on October 1, 2014, and reverted to a month to month tenancy after April 1, 2015. Originally the monthly rent was \$1,300.00 per month and due on the first day of each month. The parties agreed that the monthly rent currently is \$1,435.00 per month as it was increased during the course of the tenancy.

The tenant confirmed that they received the 10 Day Notice on December 3, 2018 and filed their application to cancel the 10 Day Notice on December 4, 2018, which is within the 5 day timeline provided for disputing a 10 Day Notice under section 46 of the *Act*. The parties agreed that the 10 Day Notice indicates that \$1,435.00 was due December 1, 2018. The tenant testified that he did not pay rent for December 2018 or January 2019 due to his sister, the co-tenant, vacating without notice to the tenant. In addition, the tenant stated that the landlord requested the tenant to sign a new tenancy agreement. Both parties confirmed that a new tenancy agreement has not been signed between the parties. The tenant stated that he was waiting for the hearing to determine what to do.

The effective vacancy date listed on the 10 Day Notice was December 13, 2018, which has passed. The landlord is seeking unpaid rent of \$1,435.00 for December 2018 and

loss of rent for January 2019. The landlord is also seeking the recovery of the cost of the filing fee.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

10 Day Notice – As the tenant confirmed that he has not paid rent since his sister vacated the rental unit, I find the 10 Day Notice is valid. I find the tenant breached section 26 of the *Act* which requires that a tenant pay rent on the date that it is due. In addition, I note that the tenant did not pay any money for use and occupancy for January 2019. Therefore, I dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply, due to insufficient evidence. I uphold the landlord's 10 Day Notice as I find the 10 Day Notice is valid and that based on the testimony of the agent and the property manager that the tenant owes \$1,435.00 for unpaid rent for December 2018 and \$1,435.00 for loss of January 2019 rent for a total amount of **\$2,870.00**. I find the tenancy ended on December 13, 2018, which was the effective vacancy date of the 10 Day Notice. Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[Emphasis added]

As a result and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenant as the tenant continues to occupy the rental unit.

Monetary Order – I find the landlord has established a total monetary claim of **\$2,970.00** comprised of \$2,870.00 in unpaid rent and loss of rent, plus the recovery of

the cost of the \$100.00 filing fee. The agent confirmed that the landlord is not seeking to offset the security deposit from the landlord's monetary claim. Therefore, I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$2,970.00**.

Conclusion

The tenant's application is dismissed, without leave to reapply, as indicated above.

The landlord's application is successful. The tenancy ended on December 13, 2018. The landlord has been granted an order of possession effective two (2) days after service on the tenant. The landlord must serve the tenant with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$2,970.00 as described above. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$2,970.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: January 17, 2019

Residential Tenancy Branch