



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, FFL

Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlord seeks the following remedies:

1. an order of possession for unpaid rent, pursuant to sections 46 and 55 of the Act; and,
2. an order for compensation for the filing fee.

A dispute resolution hearing was convened on February 11, 2019 and the landlord's two representatives, the tenant, and the tenant's advocate attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of the service of documents.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to compensation for the filing fee?

Background and Evidence

The landlord testified that the tenancy commenced in November 2015. Rent is currently \$926.00 a month, due on the first of the month. The tenant paid a security deposit of

\$430.00 and a pet damage deposit of \$100.00. A copy of the written tenancy agreement (originally between the tenant and the previous landlord) was submitted into evidence.

Rent was increased in October 2017 and again in October 2018, the landlord's agent testified, and the landlord issued the required notices of rent increase under the Act.

The landlord issued and served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on December 13, 2018, with an effective end of tenancy date of December 26, 2018. The Notice was served by the building manager S.C. and was served by being posted on the tenant's door. A copy of the Notice was submitted into evidence. The Notice indicated that the tenant had not paid a portion of the rent in the amount of \$105.00 that was due on December 1, 2018.

The tenant testified that she and her advocate had worked out a payment plan with the landlord whereby \$25.00 would be paid on a regular basis in order to make up the shortfall in rent. The tenant further testified that the landlord has not been very nice to her and that she suffers from anxiety.

The landlord testified that there was no such payment plan approved by the landlord, and that the landlord seeks an order of possession for unpaid rent.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if they paid rent within five days of service. The Notice also explains that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord's agent testified, and provided documentary evidence to support their submission, that the tenant did not pay full rent when it was due. Second, there is no evidence before me that the tenant had a right under the Act to deduct some or all of the rent. If there was any sort of payment plan that had been agreed upon between the

parties, as submitted by the tenant, there is no documentary evidence before me to make such a finding. Finally, there is no evidence before me to establish that the tenant applied to dispute the Notice within the required time.

Subsection 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an order of possession for unpaid rent. The Notice issued on December 13, 2018, is hereby upheld. Applying section 55 of the Act to the oral and documentary evidence, pursuant to sections 46 and 55 of the Act, I hereby grant an order of possession to the landlord.

Further, as the landlord was successful in its application I grant it a monetary award in the amount of \$100.00 for recovery of the filing fee. I order that the landlord may retain \$100.00 of the tenant's security deposit in full satisfaction of this claim.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant an, is effective on February 28, 2019, at 1:00 P.M. This order may be filed in, 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 Act.

Dated: February 11, 2019

Residential Tenancy Branch