



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DAKELH & QUESNEL COMMUNITY HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL OPRM-DR

Introduction

This matter deals with an Application for Dispute Resolution by the landlord for an order of possession based on unpaid rent and a monetary order. This matter was commenced by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*). On January 7, 2019, the application for a direct request was adjourned to this participatory hearing because there was no evidence submitted as to the day of the month on which rent was due pursuant to the tenancy agreement.

The tenant attended the hearing on her own behalf and VH attended the hearing as a representative for the landlord. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that they personally served the tenant with the Notice of Direct Request Proceeding on January 2, 2019. The landlord submitted a signed, witnessed Proof of Service of the Notice of Direct Request Proceeding evidencing this service. Based on the landlord's testimony and the written proof of service, I find that the tenant has been served with the Direct Request Proceeding documents in accordance with section 89 of the *Act*.

The landlord testified that they personally served the tenant with the Notice of Reconvened Hearing and the interim decision on approximately January 11, 2019. Based on the landlord's testimony, I find that the tenant has been served with the Notice of Reconvened Hearing and the interim decision in accordance with section 89 of the *Act*.

In this matter, the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") was served on the tenant by posting the notice on her door on December 6, 2018. Pursuant to sections 89 & 90 of the *Act*, the tenant is deemed to have been served with this notice three days later, on December 9, 2018.

Preliminary Matters:

Request to Amend Application To Include Further Rent

At the hearing the landlord requested an amendment to their Application for Dispute Resolution to include additional rent which became due after the service of the landlord's Ten-Day Notice on December 6, 2018. Residential Tenancy Branch *Rules of Procedure* Rule 4.2 provides

"4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served."
(emphasis added)(Residential Tenancy Branch *Rules of Procedure* Rule 4.2)

The landlord sought an amendment to increase their claim for damages by \$866.00 representing unpaid rent for January 2019 and February 2019. As the tenant continues to reside in the rental unit, I grant the landlord's request to application to include additional rent accrued since filing their Ten-Day Notice pursuant to section 64(3)(c) of the *Act*.

Concurrent Hearings

During the hearing, I was notified by the parties that another Residential Tenancy Branch hearing was being heard at the same time by a different arbitrator. The file number of this other hearing is provided on the coversheet of this decision. I advised the parties that I would not consider issues raised in the other hearing and this hearing continued.

Tenant's Late Evidence

During the hearing, the tenant informed that she had evidence which she wanted to submit. However, she said she did not have an opportunity to serve or file the evidence before the hearing. I informed the tenant that if she wanted to produce evidence that was not filed or served she could present the evidence and I would then make a determination on its admissibility.

The tenant stated that she did not have the evidence available at the time of the hearing. I asked the tenant if she was requesting an adjournment to produce her evidence and the tenant stated that she was not requesting an adjournment. Accordingly, the hearing proceeded in the absence of evidence from the tenant.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision. I reference only the facts that are relevant to my decision herein.

The landlord submitted a copy of the tenancy agreement which commenced on May 1, 2018 with a monthly rent of \$488.00 and a security deposit of \$400.00. The tenancy agreement did not state the day of the month on which the rent was due. The landlord testified that this was an inadvertent omission and that the rent was due on the first day of each month. The tenant testified that the rent was due on whichever day the tenant receives her benefits, which changed monthly.

The landlord testified that they posted the Ten-Day Notice on the tenant's door on December 6, 2018. The landlord provided a copy of the Ten-Day Notice. The Ten-Day Notice stated \$488.00 in unpaid rent due on December 1, 2018 and provided an effective vacancy date of December 16, 2018.

The landlord testified that the tenant has not paid any portion of the December 2018 rent. The landlord testified that the tenant continues to reside in the rental unit and she has not paid the January 2019 or February 2019 rent.

While the tenancy agreement states a monthly rent of \$488.00, the landlord has claimed \$438.00 per month from December 2018 to February 2019 for a total monetary claim of \$1,314.00 in this application.

The tenant agreed that she has not paid rent from December 2018 to February 2019. However, the tenant explained that she did not pay rent because the landlords told her that she did not have to pay rent because she was to move to a new facility.

The landlords testified that they did offer the tenant that they would forgo rent arrears if the tenant moved out by January 12, 2019. However, the landlords testified that this offer lapsed because the tenant did not move out.

Analysis

Despite the tenant's testimony that rent was due whenever she received her benefits, it is more likely that she paid her rent when she received her benefits but that the due date was actually on first day of each month as the landlord testified. Accordingly, I find that the rent was due on the first day of each month under the tenancy agreement.

Pursuant to section 46(4) of the *Act*, a tenant has five days after receipt of a Ten-Day Notice to dispute the notice or to pay the entire portion of unpaid rent. Accordingly, the tenant had five days after the date of service of December 9, 2018 to dispute the notice. In this case, she had until December 14, 2018. However, the tenant did not file an application to cancel the notice nor did she pay the outstanding rent in its entirety within five days of receiving the Ten-Day Notice.

Section 46(5) of the *Act* states that a tenant who does not pay the rent or file an application to dispute a notice to end tenancy for unpaid rent within five days of the

service of the notice is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Since the tenant did not pay the rent or file an application to dispute the landlord's Ten-Day within the five-day deadline, I find that the tenant is conclusively presumed to have accepted that this tenancy ended on the effective date of the notice. The Ten-Day notice stated a move out date of December 16, 2018. However, this date is corrected to December 19, 2018 by section 90 of the *Act* because notices served by posting on the tenant's door are deemed to be served three days after posting. Accordingly, I grant the landlord's application for an order of possession effective two days after service upon the tenant.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In the case before me, both parties have provided testimony regarding an agreement that the tenant did not have to pay rent for the subject period. The landlord submitted that the agreement required the tenant to vacate the rental unit. But since the tenant has failed to vacate the rental unit I find the tenant has failed to provide any evidence that the landlord had agreed to waive the payment of rent.

I am satisfied that the landlord has established on the balance of probabilities that the tenant has an obligation under the tenancy agreement to pay rent in the amount of \$488.00 per month. I am further satisfied that the tenant owes rent in the amount for \$488.00 for each of the months of December 2018 to February 2019. However, since the landlord is only claiming the amount of \$438.00 per month for each month from December 2018 to February 2019, I shall award the landlord \$1,314.00 for unpaid rent.

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$400.00. I find that the security deposit may be deducted from the unpaid rent of \$1,314.00 pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlord has been successful this matter, I award the landlord \$100.00 for recovery of the filing fee.

Accordingly, I order the tenant to pay the sum of \$1,014.00 to the landlord as follows.

ITEM	AMOUNT
Outstanding rent December 2018	\$438.00
Outstanding rent January 2019	\$438.00
Outstanding rent February 2019	\$438.00
Less: security deposit held by landlord	(\$400.00)
Filing recovered by landlord	\$100.00
TOTAL	\$1,014.00

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I grant the landlord a monetary order in the amount of **\$1,014.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to be 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: March 1, 2019

Residential Tenancy Branch