



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ONNI PROPERTY MANAGEMENT SERVICES
LTD 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 a Monetary Order for unpaid rent and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The application was initially filed under the Direct Request process but was scheduled for a participatory hearing for clarification on some of the details of the application.

Two agents for the Landlord (the “Landlord”) were present for the teleconference hearing as were both Tenants. The parties were affirmed to be truthful in their testimony. The Tenants confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence package. The Tenants did not submit any evidence prior to the hearing.

Preliminary Matters

During the hearing the Landlord confirmed that the Tenants have paid the outstanding rent. As such, the Landlord stated that they are no longer seeking monetary compensation for unpaid rent and therefore are withdrawing their claim for compensation. The Application for Dispute Resolution was amended to remove the claim for unpaid rent, pursuant to Section 64(3)(c) of the *Act*.

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?

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 which were also confirmed by the tenancy agreement submitted into evidence. The tenancy began on March 1, 2008. Current monthly rent of \$851.00 is due on the first day of each month. A security deposit of \$362.50 and a pet damage deposit of \$362.50 were paid at the outset of the tenancy. The Landlord also submitted rent increase notices into evidence which confirm the current rent amount.

The Landlord testified that the 10 Day Notice was posted on the Tenants' door on January 2, 2019. The Tenant confirmed receipt of the 10 Day Notice on this day.

The 10 Day Notice was included in evidence and states that \$231.00 was unpaid as due on January 1, 2019. The Landlords stated that they had received a partial payment towards January rent, but that an amount of \$181.00 was unpaid, as was \$20.00 for parking and \$30.00 for storage, for a total of \$231.00. The Landlord stated that they received the outstanding payment for January on January 18, 2019 and that they have since received rent for February and March 2019 for which they issued receipts 'for use and occupancy only'.

The Tenants confirmed that they paid the outstanding amount on January 18, 2019 and that they paid rent for February and March 2019. They also confirmed that they did not file an application to dispute the 10 Day Notice. The Tenants stated that they had notified the Landlord that the remainder of the rent would be late and paid it as soon as they could. The Tenants stated that one of them had paid their half of the rent as due on January 1, 2019, but that the co-tenant was behind due to health and job issues, which caused the remainder of the rent to be late and not paid until January 18, 2019.

The Landlord stated that although rent is now up to date, they have had issues with late rent payments in the past and that many 10 Day Notices have been issued. They were

presented with the option of settling the dispute but confirmed they were seeking an Order of Possession. The Landlord stated that as rent for March 2019 was paid, they would like an Order of Possession for the end of the month.

Analysis

Section 46(4) of the *Act* states that after receipt of a 10 Day Notice, a tenant has 5 days to pay the outstanding rent or to apply to dispute the notice. The Tenants confirmed receipt of the 10 Day Notice on January 2, 2019 and that they paid the rent owing on January 18, 2019. Therefore, as the Tenants did not apply to dispute the notice and did not pay the outstanding rent until 16 days after receipt of the 10 Day Notice, I find that Section 46(5) of the *Act* applies, and the Tenants are conclusively presumed to have accepted that the tenancy ends:

- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

I also note that although the Tenants stated that one of them paid rent on time, as stated in *Residential Tenancy Policy Guideline 13: Rights and Responsibilities of Co-tenants*, co-tenants are jointly and severally liable, meaning that regardless of how the co-tenants split the rent, both parties are responsible for ensuring that the rent is paid on time as due per the tenancy agreement and as required under Section 26 of the *Act*. The tenancy agreement submitted into evidence confirms that the two Tenants are under the same tenancy agreement and are therefore co-tenants.

Upon review of the 10 Day Notice, I find the form and content to comply with Section 52 of the *Act*. Therefore, pursuant to Section 55(2) of the *Act*, I find that the Landlord is entitled to an Order of Possession. I accept the testimony of the Landlord that the Tenants paid rent for March 2019 and therefore issue an Order of Possession effective March 31, 2019 at 1:00 pm.

Pursuant to Section 72 of the *Act*, I award the Landlord the recovery of the filing fee paid for the Application for Dispute Resolution. The Landlord may retain \$100.00 from the security deposit at the end of the tenancy.

Conclusion

I grant an Order of Possession to the Landlord effective **March 31, 2019 at 1:00 pm.** This Order must be served on the Tenants. Should the Tenants 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 72 of the *Act*, the Landlord may retain \$100.00 from the security deposit as recovery of 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: March 04, 2019

Residential Tenancy Branch