



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1145243 BC LTD C/O PACIFIC ASSET MANAGEMENT
CORP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPUM-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 for Unpaid Rent or Utilities (the “10 Day Notice”), for a monetary order for unpaid rent and/or utilities and for the recovery of the filing fee paid for this application.

The application was initially filed under the Direct Request Process and was adjourned to a participatory hearing from a decision dated January 23, 2019 in order to clarify some of the details of the Landlord’s application. The Landlord submitted a proof of service form signed by a witness stating that the Notice of Direct Request Proceeding package and a copy of their evidence was served to the Tenant in person on January 18, 2019.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, while no one called in for the Tenant. The Landlord was affirmed to be truthful in her testimony and stated that the Tenant was served with the Notice of Dispute Resolution Proceeding package and additional evidence by registered mail. The registered mail information was submitted as evidence and is noted on the front page of this decision.

Entering the tracking number on the Canada Post website confirms that the package was not claimed. However, despite not claiming the mail, I find that the Tenant was duly served in accordance with Sections 88 and 89 of the *Act*. I also note that failure to claim mail is not a ground for review under the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

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 or Utilities?

Is the Landlord entitled to a monetary order for unpaid rent and/or utilities?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided undisputed testimony on the tenancy which was confirmed by the tenancy agreement submitted into evidence. The tenancy began on October 30, 2011 with a previous landlord. The Landlord submitted documentation showing that the current company became the landlord as of October 19, 2018. Monthly rent in the amount of \$900.00 is due on the first day of the month. A security deposit of \$250.00 and a pet damage deposit of \$200.00 was paid at the outset of the tenancy.

The Landlord stated that the Tenant is responsible for 50% of the utility bills for the residential property. An addendum to the tenancy agreement states that the Tenant is responsible for the utilities.

The Landlord testified that the Tenant was served with a 10 Day Notice on January 3, 2019 by posting the notice on his door. The Landlord submitted a photo of the notice posted on the Tenant's door. The 10 Day Notice was included in evidence and states that \$900.00 was unpaid as due on January 1, 2019. The effective end of tenancy date of the 10 Day Notice was stated as January 16, 2019.

The Landlord testified that the Tenant paid the outstanding rent for January 2019 on January 18, 2019 and that rent for February was paid on February 14, 2019 and rent for March was paid on March 1, 2019. The Landlord submitted a copy of a receipt dated January 18, 2019 which states that the Tenant paid \$920.00 on this date, with \$20.00 to be put towards the utilities owed. As such, the Landlord confirmed that there is no amount of rent outstanding. The Landlord also stated that they did not receive any

notification from the Tenant that he applied to dispute the 10 Day Notice dated January 3, 2019.

The Landlord has also claimed an amount of \$100.16 for utilities. They submitted a hydro bill dated November 21, 2018 which states that an amount of \$97.80 is due and a gas bill dated November 19, 2018 which states that an amount of \$102.51 is due. The Landlord stated that the Tenant is responsible for 50% of these bills for a total of \$100.16. The Landlord submitted a letter dated December 5, 2018 addressed to the Tenant in which they requested the utilities to be paid in the amount of \$100.16.

Although the Landlord submitted three additional utility bills that they stated are owing from the Tenant for a total amount of \$149.75, they did not submit an amendment form adding these charges to their monetary claim. The Landlord also noted that some money had been paid toward these bills, but no further information was provided.

The Landlord confirmed that since the Tenant has paid rent for March 2019, they are requesting an Order of Possession for the end of the month.

Analysis

I refer to Section 46(4) of the *Act* which states the following:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect,
 - or
 - (b) dispute the notice by making an application for dispute resolution.

As the Tenant was served with the 10 Day Notice on January 3, 2019 and it was posted on the Tenant's door, I find that the notice is deemed received by the Tenant on January 6, 2019, pursuant to the deeming provisions of Section 90 of the *Act*. As such, the Tenant had 5 days from the deemed receipt date to dispute the 10 Day Notice or to pay the outstanding rent.

I accept the testimony and evidence of the Landlord that the outstanding rent was paid on January 18, 2019, 12 days after the Tenant was deemed to have received the 10 Day Notice. I also have no evidence before me that the Tenant applied to dispute the 10 Day Notice. As such, I find that Section 46(5) of the *Act* applies, and the Tenant is

conclusively presumed to have accepted that the tenancy ends in accordance with the 10 Day Notice.

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

Although the Landlord applied for monetary compensation for unpaid rent, I accept the testimony and evidence before me that there is currently no outstanding rent.

As for compensation for utilities claimed by the Landlord, I make no finding on the additional utilities that may be owing and only make a determination on the amount claimed by the Landlord on the Application for Dispute Resolution. Although the Landlord submitted evidence and testimony regarding additional utility payments owing, as no amendment was submitted, I am not satisfied that the Tenant was aware that the Landlord would be seeking further monetary compensation other than what was noted on the initial application. Both parties are at liberty to file a new Application for Dispute Resolution should there be any outstanding claims from this tenancy.

I accept the evidence that establishes that the Tenant owes \$100.16 for utilities and that they were notified of this through a letter dated December 5, 2018, as well as through the Landlord's application. I also accept the evidence of the January 18, 2019 receipt which shows that the Tenant paid an amount of \$920.00; \$900.00 for rent and \$20.00 towards utilities as noted on the receipt. As such, I find that the Tenant owes an amount of \$80.16 for utilities.

As the Landlord was successful in their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Landlord may retain an amount of \$180.16 from the security deposit at the end of the tenancy as full satisfaction of their monetary claim.

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 Tenant. Should the Tenant 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 Sections 67 and 72 of the *Act*, the Landlord may retain \$180.16 from the security deposit at the end of the tenancy for compensation owed for unpaid utilities and the recovery of the filing fee.

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 08, 2019

Residential Tenancy Branch