



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARS PROPERTIES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This review hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the "Act") for:

- An Order of possession pursuant to section 55;
- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord was represented by its agent SD (the "landlord"). The tenant NB (the "tenant") appeared and confirmed she represented both named respondents.

The tenant testified that they served the Notice of Review Hearing and Review Consideration Decision dated April 8, 2019 on the landlord personally on April 21, 2019. The landlord disputed that they were served by the tenant but states they became aware of the hearing when they contacted the Branch together with the tenant on April 16, 2019. As the landlord confirmed they had received the Notice of Review Hearing I find that in accordance with section 71 of the *Act*, the landlord has been sufficiently served with the Notice of Review Hearing and Review Consideration Decision.

Issue(s) to be Decided

Should the decision of March 28, 2019 be upheld, varied or set aside and replaced with a new decision?

Background and Evidence

The parties agreed on the following facts. This tenancy began on February 18, 2019. The monthly rent is \$1,150.00 payable on the first of each month. The tenant made a payment of \$600.00 by e-transfer on February 20, 2019 for part of the the pro-rated rent for February 2019.

The landlord said that they have received no other payment from the tenant apart from the single \$600.00 on February 20, 2019. The landlord submitted into evidence copies of their bank statements for the pertinent period showing the amounts deposited and withdrawn.

The landlord testified that they as the tenant failed to pay the monthly rent by the 1st of March, they issued a 10 Day Notice to End Tenancy for Unpaid Rent on March 6, 2019. The 10 Day Notice indicates the arrear amount as \$1,560.00 calculated as the balance of the pro-rated rent for February of \$385.00, March monthly rent of \$1,150.00 and a \$25.00 late charge. The landlord testified that they served the 10 Day Notice on the tenant by posting on the rental unit door on March 6, 2019. The landlord testified that the tenant made no payment of the arrears nor are they aware of the tenant filing an application for dispute resolution. The landlord subsequently served an application for dispute resolution dated March 19, 2019 and evidence on the tenant on March 21, 2019 by registered mail. The landlord submitted into documentary evidence a Canada Post tracking number as evidence of service. The tenant disputes that they were served with any of the landlord's material.

The tenant testified that they made a payment of \$1,535.00 by e-transfer to the landlord on March 1, 2019. The tenant submitted into evidence a copy of an e-transfer sent to the landlord's email on March 1, 2019, and email correspondence from the landlord dated March 2, 2019 confirming receipt of the payment. The tenant further testified that they made a subsequent rent payment of \$1,150.00 on April 3, 2019, again by e-transfer to the landlord.

Analysis

Based on the conflicting testimonies and evidence of the parties I find that I must first make a determination of credibility. Taking into account the testimonies of the parties, their content as well as whether it is consistent with the other evidence and

circumstances of this tenancy, I find that I prefer the landlord's evidence over that given by the tenant.

I accept the landlord's evidence that the application for dispute resolution was served on the tenant by registered mail sent March 21, 2019. The landlord submitted into evidence a copy of a valid Canada Post tracking number. The tenant disputes having been served but provided no cogent reason why they would not have received the application sent by registered mail. I find that the tenant is deemed served with the application on March 26, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

While both parties make some reference to documentary evidence in support of their respective positions I find that the evidence of the landlord, which includes bank statements, to be more persuasive than that of the tenant which consists of typewritten pages which they say are email correspondence from the landlord confirming receipt of rent payments. If the tenant made payments as submitted it would be reasonable to expect that there would be documentary evidence by way of bank statements, confirmation of withdrawal from their account or something more than a one line, unsigned email.

Based on the evidence I find that I am satisfied on a balance of probabilities that there was an arrear of \$1,535.00 as at March 6, 2019 the date of the 10 Day Notice. I accept the landlord's evidence that the 10 Day Notice was served by posting on the rental unit door on that date. Accordingly, I find that the 10 Day Notice was deemed served on March 9, 2019, three days after posting in accordance with sections 88 and 90 of the *Act*. I accept the landlord's evidence that no payment was made within 5 days of March 9, 2019 nor did the tenants file an application for dispute resolution. Based on the foregoing I find that the tenant is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, March 19, 2019.

I find that I am satisfied that there was a rental arrear in the amount of \$1,535.00 and based on the written tenancy agreement that a late charge payable applies to rent payments not received by the 1st of the month. Therefore I find that the landlord is entitled to a monetary award of \$1,565.00.

As the landlord's application was successful the landlord is entitled to recover their filing fee from the tenant.

Conclusion

I find it appropriate to replace the decision and orders of March 28, 2019 with the following.

I grant an Order of Possession to the landlord effective **two days after service of this Order** 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.

I issue a monetary Order in the landlord's favour for the amount of \$1,665.00, which allows the landlord to recover unpaid rent, late fee and the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 6, 2019

Residential Tenancy Branch