



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1770 DAVIE HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on June 19, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by B.S., an agent. The Tenant attended the hearing on her own behalf. Both B.S. and the Tenant provided affirmed testimony.

On behalf of the Landlord, B.S. testified the Notice of Dispute Resolution Hearing and documentary evidence were served on the Tenant by registered mail on June 19, 2019. The Tenant acknowledged receipt. The parties were represented or in attendance at the hearing. Both B.S. and the Tenant were prepared to proceed. No issues were raised with respect to service or receipt of the above documents. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant did not submit documentary evidence in response to the Application.

The parties were given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the 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

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The parties agreed the Tenant moved into her current rental unit in or about 2003. Further, the parties agreed that rent in the amount of \$828.00 per month is due on the first day of each month. The parties disagreed with respect to the amount of the security deposit held by the Landlord.

B.S. testified the Tenant did not pay rent when due on June 1, 2019. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 5, 2019 (the "10 Day Notice"). At that time, rent in the amount of \$828.00 was outstanding. B.S. testified the 10 Day Notice was served on the Tenant by posting it on the door of the Tenant's rental unit on June 5, 2019, which was also indicated on the 10 Day Notice. The Tenant did not dispute receipt of the 10 Day Notice.

In addition, the Landlord testified rent was also not paid when due on July 1 and August 1, 2019, although a partial payment of \$500.00 was made by the Tenant on July 9, 2019. The Tenant continues to occupy the rental unit.

In reply, the Tenant acknowledged rent has not been paid in full as alleged. The Tenant testified she has recently had employment issues and is currently in "dire straits". She testified that she anticipates her employment situation will change in the upcoming weeks and months.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the *Act* confirms:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[Reproduced as written.]

The Landlord sought an order of possession. In this case, B.S. testified, and I find, that the 10 Day Notice was served on the Tenant by leaving a copy attached to the door of the Tenant's rental unit on June 5, 2019. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the Tenant is deemed to have received the 10 Day Notice on June 8, 2019. Accordingly, pursuant to section 46(4) of the *Act*, the Tenant had until June 13, 2019, to either pay rent in full or to dispute the 10 Day Notice by filing an application for dispute resolution. The parties agreed the Tenant has not paid rent in full since June 1, 2019, but that a partial payment was made on July 9, 2019. In addition, there was no evidence before me to conclude the Tenant disputed the 10 Day Notice in accordance with section 46(4) of the *Act*. As a result, pursuant to section 46(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice and must vacate the rental unit. Therefore, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Further, I find the Tenant did not pay rent as alleged by the Landlord. Therefore, I find the Landlord has established an entitlement to unpaid rent in the amount of \$1,984.00 (\$828.00 + \$328.00 + \$828.00). Having been successful, the Landlord is also entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$2,084.00, which is comprised of \$1,984.00 in unpaid rent and \$100.00 in recovery of the filing fee.

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$2,084.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: August 12, 2019

Residential Tenancy Branch