



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 2 BAKER DEVELOPMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, OPR

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for unpaid rent, to retain the security deposit towards compensation owed, and for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”).

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, while no one called in for the Tenant during the approximately 16 minutes that the phone line was monitored. 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 a copy of their evidence by registered mail.

The Landlord provided the registered mail tracking information in their evidence and the tracking number is also included on the front page of this decision. The Landlord testified that the package was unclaimed and returned to them which was confirmed by entering the tracking information on the Canada Post website. 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.

Preliminary Matters

The Landlord filed the application seeking compensation for unpaid rent as of the date of the application on June 20, 2019. However, at the hearing the Landlord testified that they are also seeking outstanding rent for July and August 2019. As two payments had been made towards the outstanding rent, the Landlord stated that they are now seeking a total of \$1,940.00 which includes amounts owing for July and August 2019.

As the Landlord applied for dispute resolution in June 2019, I find it reasonable that they would be seeking additional compensation for rent from July and August 2019. I also find that the Tenant would have reasonably expected that the Landlord would claim additional months of compensation as rent is due monthly as per the tenancy agreement and as required by Section 26 of the *Act*. As such, I do not find that it would unfairly prejudice the Tenant to amend the application to the new monetary claim of the Landlord. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

Should the Landlord be authorized to retain the security deposit towards unpaid rent?

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent?

Background and Evidence

The Landlord provided undisputed testimony on the tenancy and also submitted the tenancy agreement into evidence. The Landlord stated that the corporate landlord changed their business name which is why the name on the tenancy agreement is different than the current name of the landlord. The tenancy started on January 4, 2011. Current rent in the amount of \$835.00 is due on the last day of each month and a security deposit of \$400.00 was paid at the start of the tenancy.

The Landlord testified that the 10 Day Notice was served to the Tenant on May 24, 2019 by posting the notice on the Tenant's door. A copy of the 10 Day Notice was submitted into evidence and states that \$1,925.00 was due as of April 30, 2019.

The Landlord stated that they did not receive notification that the Tenant had applied to dispute the 10 Day Notice and that the outstanding rent was not paid within 5 days. The

Landlord testified that since service of the 10 Day Notice on May 24, 2019, the Tenant has made two payments towards rent. She stated that this was a payment of \$950.00 on June 18, 2019 and a payment of \$800.00 on July 12 or July 13, 2019.

The Landlord submitted a receipt for rent payment dated June 18, 2019. It is noted on the receipt that a payment of \$950.00 was made on this date which was \$350.00 towards April 2019 rent and \$600.00 towards May 2019 rent. The receipt also indicates that an amount of \$1,070.00 was still outstanding for the remaining May 2019 rent and the entire rent for June 2019.

Analysis

Section 46(1) of the *Act* states the following:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I accept the testimony of the Landlord that there was an amount of rent owing as of May 24, 2019 when the 10 Day Notice was served to the Tenant. As stated in Section 46(4) of the *Act*, after receipt of a 10 Day Notice a tenant has 5 days to pay the outstanding rent or to apply to dispute the notice.

I have no evidence before me that the Tenant applied to dispute the 10 Day Notice and I accept the testimony of the Landlord that the outstanding rent was not paid within 5 days. Therefore, I find that Section 46(5) of the *Act* applies as follows:

(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.

Upon review of the 10 Day Notice, I find that the form and content comply with Section 52 of the *Act*. Therefore, the Landlord is entitled to an Order of Possession pursuant to Section 55 of the *Act*. I grant the Landlord a two-day Order of Possession.

Regarding the unpaid rent, I accept the testimony and evidence of the Landlord that an amount of \$270.00 is owing for June 2019, \$835.00 for July 2019 and \$835.00 for August 2019 for a total of \$1,940.00. The Landlord may retain the security deposit of \$400.00 towards the compensation owed and is awarded a Monetary Order in the amount outlined below:

| | |
|--------------------------------|-------------------|
| June 2019 rent | \$270.00 |
| July 2019 rent | \$835.00 |
| August 2019 rent | \$835.00 |
| <i>Less Security deposit</i> | <i>(\$400.00)</i> |
| Total owing to Landlord | \$1,540.00 |

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** 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 Section 67 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,540.00** as outlined above. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: August 13, 2019

Residential Tenancy Branch