



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO INN LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, FF

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I waited until 10:14 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

From the outset and throughout the hearing, the landlord appeared upset when asked to answer relevant, simple questions regarding this tenancy and her application. The landlord intentionally disconnected from the hearing at 10:14 a.m. while I was speaking to her and before I was able to formally close the hearing.

At the outset of the hearing, I confirmed that the landlord is the owner of this motel that provides residential accommodation year-round to residents. The motel also provides vacation and travel accommodation. The landlord confirmed that the property is licensed for residential use and accommodation, as there are no restrictions in this regard. Accordingly, I find that the landlord does not fall under the exception of Section 4(e) of the *Act*, which states that this *Act* does not apply to living accommodation occupied as vacation or travel accommodation. The landlord testified that the tenants were occupying the rental unit for residential accommodation.

During the hearing, the landlord amended her application to correct the spelling of both tenants' surnames, which are now correctly reflected in the style of cause for this decision.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent, dated September 12, 2014 ("First 10 Day Notice"), was served personally to the tenant PM by the landlord's agent EZ, on September 12, 2014 at 2:00 p.m. The landlord attached a proof of service with her application but it was incomplete and contained incorrect information. The landlord testified that the tenant PM signed the acknowledgment that he received the notice, although the signature was difficult to read and his name was not printed underneath the signature, as required. The landlord signed the proof of service which stated that she had served the notice herself, however, she clarified that her agent EZ served the notice. EZ's name does not appear anywhere on the proof of service, including in the blank space for the landlord's agent who served the notice. There is no time indicating when the tenant PM was served, however, the landlord confirmed the time orally during the hearing. The landlord testified that she is not aware as to whether the other tenant, KM, received a copy of the notice. Despite these irregularities, I accept the landlord's testimony regarding the method and date of service of this notice. Section 88(e) permits a landlord to serve the First 10 Day Notice "by leaving a copy at the person's residence with an adult who apparently resides with the person." The landlord testified that the tenant PM was served at his rental unit. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were served with the First 10 Day Notice on September 12, 2014.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent, dated October 4, 2014 ("Second 10 Day Notice"), was served personally to the tenant PM by the landlord's brother and agent TJC, on October 4, 2014 at 2:00 p.m. The landlord attached a proof of service with her application but it too was incomplete and contained incorrect information. The proof of service indicated that both P/KM were served with the notice, but the landlord testified that only PM was served with the notice. The landlord testified that the tenant PM signed the acknowledgment that he received the notice, although the signature was different from that on the First 10 Day Notice proof of service. The four total signatures purportedly of the tenant PM, on the Second 10 Day Notice proof of service form, all appear to be different from each other. However, the landlord testified that all the signatures represented the tenant PM. The landlord testified that the tenant PM occasionally uses his first name "E" when signing documents, but she did not recognize him by this first name, only the name PM. The tenant PM's signature was again difficult to read and his name was not printed underneath the signature, as required. Further, the tenant PM's signature appeared on the blank spaces provided on the proof of service form for a description of what was being served to the tenant, the name of the person serving the notice, and the printed name of the person receiving the notice. The landlord testified that she is not aware as to whether the other tenant, KM, received a copy of the notice. Despite these irregularities, I accept the landlord's testimony regarding the method and date of service

of this notice. As above, section 88(e) permits a landlord to serve the Second 10 Day Notice “by leaving a copy at the person’s residence with an adult who apparently resides with the person.” The landlord testified that the tenant PM was served at his rental unit. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were served with the Second 10 Day Notice on October 4, 2014.

The landlord testified that she served both tenants individually and personally at their rental unit, with the Application for Dispute Resolution hearing package (“Application”) on November 5, 2014. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were served with the Application on November 5, 2014.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord testified that she has been the owner of the rental property since June 10, 2010. She testified that this tenancy began on January 1, 2010 on a month-to-month basis. She initially testified that the tenancy began in June 2010, but when I referenced the rent ledger that she provided with her Application, where it indicated January 1, 2010, the landlord confirmed that the tenancy did, in fact, begin on January 1, 2010. Monthly rent is payable in the amount of \$960.00 on the first day of each month. No security deposit was collected from the tenants. No written tenancy agreement exists for this tenancy, as confirmed by the landlord. Both tenants continue to reside in the rental unit.

The landlord has applied for an Order of Possession for non-payment of full rent for the months of August, September and October 2014. The landlord indicated that \$1,575.00 in unpaid rent for August and September was due for the First 10 Day Notice. The landlord indicated that \$1,600.00 in unpaid rent for August, September and October was due for the Second 10 Day Notice. However, the landlord testified that the amount actually owing for both notices was greater than that indicated on each notice. She stated that the current outstanding amount in unpaid rent for both tenants is more than \$3,000.00. When questioned as to why she did not indicate the correct amounts owing on each notice, the landlord testified that she did not want to count all the outstanding rent owed so she indicated a lesser amount and gave the tenants “a break.” The

landlord testified that the tenants have been paying rent late for four years, during this tenancy.

The landlord provided a rent ledger, indicating a different motel name on the letterhead of the ledger, than that of the current landlord. The landlord confirmed that the ledger applied to this tenancy but had been printed on the former hotel's letterhead. The ledger indicates partial payments made by the tenants from June 2014 to September 20, 2014. The ledger does not show the outstanding amount owed by the tenants for rent, as of September 20, 2014. The landlord confirmed that the last rent payment made by the tenants was on September 20, 2014 and no further payments have been made after this date. The landlord testified that the tenants paid rent in cash but she did not provide them with receipts for their rent payments, as she did not know that she was required to do so. The landlord testified that she provided the tenants with summary receipts at the end of each month for the outstanding rent owed at that time. The landlord testified that she accepted the tenants' partial payments for rent and continued the tenancy on that basis. She did not state that she accepted the partial payments for use and occupancy only.

Analysis

The landlord states that the tenants failed to pay the full rent for September 2014. Partial rent payments, totalling \$900.00, were made by the tenants on September 5, 12, 19 and 20, 2014. Because the landlord indicated an incorrect amount on the First 10 Day Notice, and was unable to provide me with an accurate amount for the outstanding rent owed as of September 1, 2014, I do not know whether these partial payments covered the outstanding rent balance owed at that time. The landlord stated that she accepted these payments for rent and continued the tenancy on that basis. This may have reinstated the tenancy, as the landlord did not provide any receipts indicating that the payments were being accepted for "use and occupancy only." Further, the tenants may have assumed a continuing tenancy based on the landlord's pattern of accepting late rent payments over a period of four years.

The landlord states that the tenants failed to pay the full rent for October 2014, as no payments have been made by the tenants towards rent, since September 20, 2014. As such, I find that the tenants failed to pay the full rent for October 2014 within five days of receiving the Second 10 Day Notice. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of receiving the Second 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of these actions within five days led to the end of this tenancy on October 15, 2014, the effective date indicated on the Second 10 Day Notice. In this case, this

required the tenants and anyone on the premises to vacate the premises by October 15, 2014. As this has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

During the hearing, the landlord confirmed my understanding that her application did not seek a monetary order for unpaid rent.

During the hearing, the landlord testified that she was withdrawing her claim for a filing fee for her application. Accordingly, I make no award as to the landlord's filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's application for the recovery of her filing fee was withdrawn.

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: November 19, 2014

Residential Tenancy Branch

