



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE DEVELOPMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR CNC OPR MNR FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the Act"). The landlord applied for: an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for: cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46 and cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's 10 Day Notice issued on April 1, 2018. The landlord relied on this notice to end tenancy in this hearing although several 10 Day Notices and at least one 1 Month Notice has been issued to the tenant on March 1, 2018. The landlord did not rely on the 1 Month Notice to End Tenancy. Both parties confirmed receipt of the other's Application for Dispute Resolution package (and evidence) for this hearing.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled or is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent?
Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on July 2011. The current rental amount of \$1160.00 is payable on the last day of each month. The landlord testified that she continues to hold the \$491.00 security deposit paid by the tenant at the outset of the tenancy. The landlord sought an Order of Possession for unpaid rent as well as a monetary order for the unpaid rent.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant on April 1, 2018. The tenant confirmed receipt of the 10 Day Notice. The landlord testified that the tenant did not pay rent of \$1160.00 due on April 1, 2018. The landlord testified that the tenant also did not pay rent in March 2018. The landlord testified that, as of the date of this hearing, the tenant has failed to pay 3 months rent – March, April and May 2018.

The tenant acknowledged that she did not pay rent in March, April or May 2018. She testified that she had been told she did not need to pay rent while awaiting a Residential Tenancy Branch dispute resolution hearing. The tenant also confirmed the landlord's testimony that she paid rent late in February 2018.

The landlord testified that, during this tenancy, the tenant has paid rent late at least 20 times. The landlord testified that, most recently (excluding February 2018), the tenant was late in March, July, August, October and December 2017. The landlord testified that, each time the tenant was late, she was provided with a late payment slip: a brightly coloured piece of paper that indicated the rent had been paid late. The landlord testified there have been late charges incurred by the tenant for all of her late rent payments. The landlord referred to a ledger with unpaid \$25.00 late charges in some months throughout the tenancy dating back many years.

The landlord and tenant both referred to a multitude of notices to end tenancy from the landlord to the tenant. The landlord sought an Order of Possession based on the tenant's failure to pay rent (in March 2018 and April 2018). The landlord testified that the tenant did not pay the 2 months of outstanding rent after receiving the 10 Day Notice on April 1, 2018.

The tenant applied to cancel the landlord's 1 Month Notice to End Tenancy as well as the landlord's April 1, 2018 10 Day Notice. She submitted that she disputes some of the fees or charges that have been placed on her account are accurate.

Analysis

I accept the landlord's evidence, in testimony and documentary evidence, that the tenant did not pay rent in March, April or May 2018. The tenant did not dispute that she has failed to pay these rental amounts. However, she disputed whether her tenancy should end.

I refer the tenant to section 26 of the Act: Section 26(1) of the Act establishes that "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." The tenant is not entitled to withhold her rent in these circumstances. As a result, the tenant has failed to pay rent in accordance with the requirements of her residential tenancy agreement and section 26 of the Residential Tenancy Act.

The tenant failed to pay the \$1160.00 rent within five days of receiving the 10 Day Notice to End Tenancy. The landlord has applied for an Order of Possession for Unpaid Rent. I find that the landlord has proven that the 10 Day Notice for Unpaid Rent was justified.

As the tenant has not paid 3 months of outstanding rent and the landlord has proven that she was justified in issuing a 10 Day Notice to End Tenancy for Unpaid Rent, I find that the landlord is entitled to an Order of Possession.

I find that the landlord is also entitled to recover \$1160.00 in rent for the 3 months that remain outstanding. The landlord also sought late fees: the landlord provided copies of the written tenancy agreement which established a late payment fee. I find that the landlord is entitled to a \$25.00 late fee for the months in 2018 where rent has been paid late or not paid as of the date of this hearing: a \$25.00 late fee for February 2018 late rent as well as a late fee for the months of March, April and May 2018 (\$25.00 x 3) for a total of \$100.00.

I find the tenant's security deposit should be addressed at the end of the tenancy in accordance with section 38 of the Act.

As the landlord was successful in her application, I find that the landlord is entitled to recover the filing fee for this application.

Conclusion

I dismiss the tenant's application to cancel the 10 Day Notice to End Tenancy as well as the application to cancel the 1 Month Notice to End Tenancy for Cause (late payment of rent).

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlord as follows:

Rental Arrears for March, April and May 2018	\$3480.00
Late Payment Fee (\$25) x 4 (February, March, April and May 2018)	100.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$3680.00

The landlord is provided with this monetary 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: May 18, 2018

Residential Tenancy Branch