



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTGATE CAPITAL INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On September 18, 2018, the Landlord submitted an Application for Dispute Resolution by way of an *ex parte* Direct Request Proceeding under the *Residential Tenancy Act* (the “Act”). The Landlord requested an Order of Possession due to unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the Filing Fee. The Landlord’s evidence for the Direct Request was reviewed and found to be incomplete; therefore, the matter was set for a participatory hearing via conference call.

The agents for the Landlord (the “Landlord”) attended the conference call hearing; however, the Tenant did not attend at any time during the 25-minute hearing. The Landlord testified that the Tenant was served the Notice of Hearing by sending it to her via registered mail on September 25, 2018. During the hearing, I confirmed, via the Canada Post website, that the Tenant signed for the Notice of Hearing package on September 27, 2018. I find that the Tenant has been duly served with the Notice of Hearing in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

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

Should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord provided the following affirmed testimony:

The Tenant moved into the residential property on November 7, 2013 and as part of her employment as the Resident Caretaker, she was provided a rental unit for a discounted amount. The contract had a term that included details regarding the end of employment and that there would no longer be a discounted rent for the rental unit and that the rent would be established at "market rent". The Landlord did not have a formal Tenancy Agreement and did not collect a security deposit from the Tenant.

The Landlord stated that the Tenant was dismissed from employment on July 19, 2018 and that August's rent of \$1000.00 was deducted from the Tenant's last paycheck. On September 1, 2018, the Tenant failed to pay the \$1,000.00 rent and would not communicate with the Landlord regarding her plans for paying rent or moving from the rental unit.

On September 6, 2018, the Landlord placed a 10-Day Notice to End Tenancy for Unpaid Rent (the "Notice"), on the Tenant's door. The Notice provided information to the Tenant to pay the \$1,000.00 rent within five days, dispute the Notice or to move out of the rental unit by September 17, 2018.

The Landlord stated that the Tenant has not paid any rent for September, October or November 2018 and is still living in the rental unit. The Landlord has requested a Monetary Order for the unpaid rent for September and October 2018 and an Order of Possession.

Analysis

Based on undisputed evidence, I find that the Tenant entered into an agreement with the Landlord that required the Tenant to pay monthly rent of \$1,000.00, as established in the Resident Caretaker Contract and by the amount deducted from the Tenant's pay cheque for the August 2018 rent. The Tenant has not paid rent from September 1, 2018 through to November 5, 2018. As the Tenant is required to pay rent pursuant to Section 26(1) of the Act, I find that the Landlord has established a monetary claim in the amount of \$2,000.00 in outstanding rent (the amount claimed by the Landlord).

The Tenant failed to pay the rent in full, as identified as owing in the Notice, within five days of receiving the Notice. The Tenant has not made Application pursuant to Section 46(4) of the Act

within five days of receiving the Notice. In accordance with Section 46(5) of the Act, the Tenant's failure to take either of these actions within five days led to the end of this tenancy on the (amended) effective date of the Notice. In this case, this required the Tenant to vacate the premises by September 19, 2018. As that has not occurred, I find that the Landlord is entitled to a two-day Order of Possession. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit within the two days required, the Landlord may enforce this Order in the Supreme Court of British Columbia.

The Landlord's Application has merit and should be compensated for the cost of the filing fee, in the amount of \$100.00.

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$2,100.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served 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.

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 05, 2018

Residential Tenancy Branch