



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Proline Management Ltd and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNOP, CNMN, FFT, OPR-DR, FFL

Introduction

The hearing occurred by conference call based on an Application for Dispute Resolution (Application) filed by the Tenant on July 21, 2023 and an Application filed by the Landlord on July 28, 2023.

The Tenant applied:

- For cancellation of the 10 Day Notice to End Tenancy
- For the Landlord to repay the cost of the filing fee

The Landlords applied:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served on August 2, 2023
- For a Monetary Order for unpaid rent
- For the Tenant to repay the cost of the filing fee

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

- I find that Tenant was served with the Proceeding Package by registered mail on August 4, 2023 and deemed to have received it on August 9, 2023, in accordance with the Act. The Landlord provided a Canada Post receipt and tracking number as proof of service.
- I find that Landlord's representative acknowledged service of the Proceeding Package and that the Landlord was duly served in accordance with the Act.

Service of Evidence

- Based on the submissions before me, I find that the Tenant's evidence was served to the Landlords in accordance with section 88 of the Act.

- Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Issue(s) to be Decided

1. Is the Tenant entitled to a cancellation of the 10 Day Notice to End Tenancy for unpaid rent?
2. Is the Tenant entitled to recover the filing fee?
3. Is the Landlord entitled to an Order of Possession based on the Notice?
4. Is the Landlord entitled to a Monetary Order for unpaid rent?
5. Is the Landlord entitled to recover the filing fee?

Preliminary Matters: Tenant Also Known As, Second Tenant Named on Application

The Tenant has made an application for dispute resolution under the name P.H..

Landlord representative S.C. testified that the Tenant D.H. sometimes represents himself by the name P.H..

The tenancy agreement signed by the Tenant is under the name D.H..

In the email exchange between the Tenant and the Landlord on July 10, 2023, the Tenant uses the name D.H..

Based on this information I have amended the application to include both names in my decision and orders. From herein, D.H. a.k.a. P.H. will be referred to as the Tenant.

Landlord representative S.C. confirmed that the other tenant named in the Tenant's application, M.H, was a minor occupant at the time the tenancy agreement was signed and as such was not a signatory to the tenancy. The copy of the tenancy agreement that was submitted into evidence corroborates this.

As M.H. was a minor at the time the lease was signed and was listed as an occupant rather than a tenant and considering no testimony or evidence was provided indicating he subsequently became one, I have amended the Tenant's application and removed M.H. from the dispute.

Background and Evidence

I have reviewed all evidence, including the testimony of Landlord representative S.C. but will refer only to what I find relevant for my decision.

According to Landlord representative S.C., the tenancy began on September 1, 2016, with an agreed rent of \$2,600.00 per month due on the first day of each month. A security deposit of \$1,250.00 was paid by the Tenant to the Landlord at the start of the tenancy and is currently held by the Landlord in trust. A copy of a tenancy agreement was submitted by the Landlord into evidence confirming these details. Landlord representative S.C. advised that the Tenant's current monthly rent is \$2,971.26.

The Tenant and Landlord both provided a copy of the 10 Day Notice to End Tenancy posted on the Tenant's door on July 11, 2023, for \$2,971.26 in unpaid rent.

A copy of a Direct Request Worksheet was provided by the Landlord indicating the amount of rent due and paid during the months of March, April and July 2023, indicating a balance owing of \$2,971.26 in unpaid rent as of July 2023.

The Landlord submitted a copy of an email exchange between the Landlord's representative and the Tenant in which the representative, on July 7, 2023, advised the Tenant that his rental payment had been returned due to insufficient funds and the Tenant, on July 10, 2023, apologised for the situation and promised to drop off a bank draft the following day to pay for the outstanding rent.

Landlord representative S.C. stated that as the rent was not received on July 11, 2023, the notice was served on the Tenant accordingly.

Landlord representative S.C. further testified that no rent has been received for July, August or September 2023. She stated that the Tenant also owes \$317.08 in unpaid utilities but could not confirm if or when a letter of demand was issued to the Tenant requesting the payment.

Analysis

Is the Tenant entitled to a cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent?

Under section 46(4) of the *Act*, a tenant who receives a notice for unpaid rent must do one of the following within 5 days of receipt of the notice:

- pay the overdue rent, in which case the notice has no effect, or
- dispute the notice by making an application for dispute resolution.

As the Landlord served the Notice by posting it on the Tenant's door on July 11, 2023, the Tenant is deemed to have received it on July 14, 2023, 3 days later as per section 90 of the Act. The Tenant had until July 19, 2023 to pay the arrears or file an application for dispute resolution.

As the Tenant did not pay his arrears or dispute the notice within five days of receiving it, he is conclusively presumed to have accepted the end of the tenancy under section 46(5) of the Act.

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Relying on the Direct Request Work sheets provided and undisputed testimony of Landlord representative S.C., I find that the Tenant did not pay the rent due on July 1, 2023 and that the Landlord therefore had a valid reason for issuing the notice.

The Tenant did not attend the hearing to dispute the Landlord's claim of unpaid rent or provide evidence that he was authorized under section 26 of the Act to withhold it. His application for the cancellation of the Notice is therefore dismissed without leave to reapply.

Is the Tenant entitled to recover the \$100.00 filing fee?

As the Tenant was unsuccessful in her application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act and is therefore dismissed without leave to reapply.

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

Section 55 of the Act states that:

- (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, the director must grant to the landlord an order of possession of the rental unit if
 - a) the landlord's notice to end tenancy complies with section 52, and
 - b) the director, during the dispute resolution proceeding, dismisses the tenant's application and upholds the landlord's notice.

I find that the Notice issued by the Landlord complies with section 52 (form and content) and was served in accordance with sections 46 and 88 of the Act.

The Tenant's application to dispute the Notice has been dismissed.

The Landlord's application for an Order of Possession is hereby granted under section 55 of the Act.

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

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Based on the evidence submitted and the undisputed testimony of the Landlord, I find that the Landlord has substantiated their claim for unpaid rent for July to September 2023.

I hereby grant the Landlord a monetary award in the amount of \$8,913.78 for unpaid rent owing for July to September 2023 under section 55(4)(b) of the Act. The Landlord may keep the Tenant's security deposit of \$1,269.14, including interest, per section 38(4)(b) in partial satisfaction of the outstanding rent.

I note that the Landlord did not include utilities in the notice, their application or provide evidence that indicates that utilities were owed by the Tenant, for what period of time or that a written demand letter for \$317.08 in unpaid utilities was ever provided to the Tenant. The Tenant was not given notification that the Landlord was seeking to recover unpaid utilities in their application or what evidence would be relied on and therefore is not under consideration. Should the Landlord wish to pursue compensation for unpaid utilities they may file an application for dispute resolution accordingly.

Are the Landlords entitled to recover the \$100.00 filing fee?

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlord **effective two (2) days after service of this Order on the Tenant**. Should the Tenant 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.

I grant the Landlords a Monetary Order in the amount of **\$7,744.64** for the recovery of rent for July to September 2023 and for the filing fee for this application. 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: October 12, 2023

Residential Tenancy Branch