



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied: to keep the Tenant's security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the filing fee for the cost of making the Application from the Tenant.

The Landlord appeared for the hearing and provided affirmed testimony as well as a copy of the notice to end tenancy prior to the hearing. There was no appearance by the Tenant during the ten minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the documents by the Landlord for this hearing.

The Landlord testified that he served the Tenant with a copy of the Application and the Notice of Hearing documents to the rental unit address by registered mail on February 5, 2016. The Landlord provided the Canada Post tracking number into oral evidence, which is noted on the front page of this decision. The Landlord allowed me to look at the tracking report on the Canada Post website which indicates that the Tenant signed for and received the documents on February 8, 2016. Therefore, I find the Landlord served the required documents for this hearing pursuant to Section 89(1) (c) of the Act. The hearing continued with the undisputed evidence of the Landlord.

At the start of the hearing, the Landlord explained that he did not want to deal with the Tenant's security deposit in this hearing as he was unable to determine the exact amount paid by the Tenant at the start of the tenancy. Therefore, I allowed the Landlord to remove this item from his Application pursuant to my authority under Section 64(3) (c) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started approximately ten years ago. Rent is currently payable by the Tenant in the amount of \$778.00 on the first day of each month. The Landlord testified that the Tenant only paid \$400.00 for December 2015 rent. The Tenant then failed to pay any rent for January 2016. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on January 13, 2016 by attaching it to the Tenant's door.

The Notice shows a vacancy date of January 23, 2016 due to \$1,156.00 in unpaid rent due on January 1, 2016. The Landlord testified that the Tenant has also failed to pay rent for February and March 2016 which the Landlord had anticipated and had applied to recover in the details section of the Application. The Landlord testified that the Tenant has not disputed the Notice and informed him that he was not going to leave the rental unit until the Landlord had an Order of Possession. Therefore, the Landlord now seeks to recover unpaid rent of \$2,712.00 as well as an Order of Possession.

Analysis

Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement whether or not the landlord complies with the Act. Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

Having examined the Notice, I find that the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed evidence that the Notice was served to the Tenant by attaching it to the Tenant's door on January 13, 2016. Section 90(c) of the Act allows documents served in this manner to be deemed received three days later. Therefore, I find that the Tenant was deemed to have received the Notice on January 16, 2016. Therefore, the Tenant had until January 21, 2015 to pay rent or make an Application to dispute the Notice. As the Tenant is deemed to have received the Notice on January 16, 2015, the vacancy date of the Notice is now corrected to January 26, 2016 pursuant to Section 53 of the Act.

There is no evidence before me that the Tenant disputed the Notice, paid the outstanding rent, or has vacated the rental unit by the corrected vacancy date of the Notice. As a result, I find that the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected vacancy date of the Notice. As this date has now passed and the Tenant is still residing in the rental unit, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court.

I find the Landlord is also entitled to unpaid rent in the amount of \$2,712.00 claimed (\$378.00 + (\$778.00 x3)). As the Landlord has been successful in this matter, the Landlord is also entitled to the \$100.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$2,812.00. The Landlord is granted a Monetary Order for this amount. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

Copies of the above orders for service and enforcement are attached to the Landlord's copy of this decision. The Tenant should note that even though the Landlord did not elect to deal with the security deposit in this hearing, the Landlord may deal with the Tenant's security deposit pursuant to Section 38(3) of the Act.

Conclusion

The Tenant has failed to pay rent pursuant to the Act. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenant. The Landlord is also granted a Monetary Order for unpaid rent and the filing fee for \$2,812.00.

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: March 18, 2016

Residential Tenancy Branch

