



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord had originally applied via the Direct Request Proceeding process, an ex parte hearing based on the written submissions of the landlord. The landlord requested an Order of possession and a monetary Order.

On January 29, 2016 an interim decision was issued, adjourning the ex parte hearing to this participatory hearing. On February 10, 2016 the landlord had called the Residential Tenancy Branch (RTB) to enquire regarding a decision on his application and was told the decision had been mailed. The landlord provided affirmed testimony that within several days the decision arrived with the Notice of hearing for today's hearing. The next day; either February 11 or 12, 2016 the landlord personally served the tenant a copy of the interim decision and hearing documents. Service occurred at the rental unit in the afternoon.

Therefore, I find pursuant to section 71(2)(b) of the Act that the hearing documents have been sufficiently served to the tenant via personal delivery.

The tenant applied for dispute resolution on January 25, 2016, to cancel the 10 day Notice ending tenancy issued on January 11, 2016, an Order for emergency repairs, repairs, services or facilities required by law and to suspend or set conditions on the landlords' right to enter the rental unit.

The landlord stated that he was unaware of the tenants' application and had not been served with Notice of the tenants' hearing, scheduled to be heard at the same time as the landlords' application.

Preliminary Matters

Section 4.2 of the Residential Tenancy Branch Rules of Procedure provides:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

Therefore, as the landlord had applied requesting compensation for January 2016 rent and the matter is being heard in March 2016 I find that the application is amended to consider any unpaid rent, per diem rent and loss of rent revenue to March, 2016 inclusive.

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, per diem rent and loss of rent revenue?

Background and Evidence

The tenancy details set out in the interim decision were confirmed as correct and that the owner named in the tenancy agreement is the landlord who made the application. The landlord lives in the home where the rental suite is located.

The landlord confirmed that the 10 day Notice to end tenancy issued on January 11, 2016 was posted to the tenants' door on that date at 10:00 a.m. The Notice had an effective date of January 20, 2016.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,000.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant has not paid rent since December 2015.

The landlord said the tenant has been coming and going from the rental unit. The landlord believes the tenant was last at the rental unit one week ago.

To date the tenant has not paid rent in the sum of \$3,000.00 from January to March, 2016, inclusive.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on January 14, 2016.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on January 14, 2016, I find that the earliest effective date of the Notice is January 24, 2016.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the

earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was January 24, 2016.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on January 24, 2016, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent, or file an Application for Dispute Resolution to dispute the Notice. On January 25, 2016 the tenant filed to dispute the Notice. The application was made after the effective date of the Notice. The tenant did not apply for more time to apply to cancel the Notice. Section 66 of the Act prohibits an extension of time to make an application to cancel a Notice beyond the effective date of the Notice. Therefore, I find that the tenants' application to cancel the Notice was not made within the allowable time limit.

The tenant failed to serve the landlord with Notice of her hearing and did not attend this hearing in support of her application. Therefore, I find that the tenants' application is dismissed.

Section 55 of the Act provides:

55 *(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a 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 [form and content of notice to end tenancy], and
(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Therefore, as the tenants' application is dismissed and the tenant failed to fully dispute the Notice I find that the landlord must be issued an Order of possession.

I find, pursuant to section 67 of the Act that the landlord is entitled to compensation in the sum of \$3,000.00 for unpaid rent, and loss of rent revenue to March 31, 2016. The landlord will not be provided with adequate time to mitigate the loss and locate a new tenant before April 1, 2016 and is entitled to the loss of rent revenue that will result.

As the landlords' application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee cost from the tenant.

The landlord has been granted an Order of possession that is effective two days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

In accordance with section 72(2) of the Act I find that the landlord is entitled to retain any security deposit that is held in trust, from the sum owed by the tenant. The landlord must declare any deduction that has been made at the point of enforcement of the monetary Order.

Based on these determinations I grant the landlord a monetary Order in the sum of \$3,100.00. 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.

Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent, and loss of rent revenue.

The landlord may retain the security deposit if one is held in trust. That sum must be declared when enforcement of the monetary Order proceeds.

The landlord is entitled to filing fee costs.

The tenants' application is dismissed.

This interim decision should be read in conjunction with the interim decision issued on January 29, 2016.

This decision is final and binding on the parties and 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 23, 2016

Residential Tenancy Branch

