



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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 Tenants' security deposit and to recover the filing fee from the Tenants.

The Tenants, the Landlord, and the Landlord's agent appeared for the hearing and provided affirmed testimony. The Tenants each confirmed personal service of the Landlord's Application and Notice of Hearing documents. The Landlord provided a copy of the notice to end tenancy into written evidence prior to the hearing.

There was no evidence before me from the Tenants. However, during the hearing, the Tenants indicated that they had provided documentary and photographic evidence prior to this hearing. When the Tenants were asked when and how they had served this to the Residential Tenancy Branch and to the Landlord, the Tenants explained that they had uploaded and emailed it to the Residential Tenancy Branch and had left it in the mail box for the Landlord a week prior to this hearing.

I examined the electronic records relating to this file and there is no record of the Tenants submitting evidence for this file. In addition, the *Residential Tenancy Act* (the "Act") and Rule 3 of the Residential Tenancy Branch Rules of Procedure does not allow or provide the means for documentary or digital evidence to be served or uploaded to the file by email. A party must serve evidence using the methods outlined in the Act and the Rules of Procedure. The Landlord's agent testified that they had received a text message from the Tenants indicating that they had left photographs for the Landlord relating to this dispute but the Landlord's agent had not seen them. The Tenants explained that their evidence related to photographs showing repairs they had conducted at the rental unit.

Based on the foregoing and the lack of any documentary or digital evidence from the Tenants before me in this file, I was only able to conclude that the Tenants had not provided evidence prior to this hearing pursuant to the Act or the Rules of Procedure.

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?
- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The parties agreed that this tenancy started on December 15, 2015. Rent for the tenancy is payable by the Tenants in the amount of \$1,150.00 and the Tenants are responsible for paying for electricity. Rent is payable on the first day of each month. The Tenants provided the Landlord with a security deposit of \$550.00 on December 10, 2015 which the Landlord still retains.

The Landlord's agent testified that the Tenants failed to pay rent for January 2016. As a result, the Tenants were personally served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on January 2, 2016. The Notice was provided into evidence and shows an expected date of vacancy of January 22, 2016 due to \$1,150.00 in unpaid rent. The Landlord's agent testified that since this time the Tenants have failed to pay rent for this tenancy and seeks to end this tenancy and obtain a Monetary Order for unpaid rent in the amount of \$4,600.00.

The Tenants confirmed receipt of the Notice on January 2, 2016. The male Tenant testified that they had asked the Landlord to issue them with the Notice so that they could give it to social services who were then going to pay their rent directly to the Landlord. The male Tenant testified that when social services contacted the Landlord, the Landlord informed them that the Tenants did not have to pay rent.

The male Tenant testified that they did not pay rent for February and March 2016 because the Landlord had told them not to as he was going to demolish the rental unit. The Tenants confirmed that they had not been provided with a 2 month notice to end the tenancy but rather an incentive agreement that if the Tenants were to vacate the rental unit at the end of February 2016, they would be given \$1,700.00 in cash by the

Landlord. The Tenants explained that they had not paid rent to the Landlord for April 2016 as the Landlord had not been in contact with them about receiving the monies.

The female Tenant argued that they had conducted repairs to the rental unit and the Landlord had allowed them to deduct money from their rent for this. The female Tenant also testified that the Landlord had failed to fix mold problems and other repairs to the rental unit which they had to do.

The Landlord confirmed that the Tenants had not paid their rent within the five days after they had received the Notice. The Landlord testified that he got two calls from social services on January 5, 2016 explaining that social services were going to be paying a portion of the Tenants' rent. The Landlord confirmed that no rent was paid to him by social services or the Tenants.

The Landlord's agent confirmed that the Landlord had offered the Tenants an incentive to move out of the rental unit at the end of February 2016 but this did not involve or allow the Tenants to not pay rent. The Landlord testified that as the Tenants told him they were not going to leave at the end of February 2016, he was not going to honor the agreement or pay the Tenants the \$1,700.00 cash incentive, which is the reason why the Application was brought against the Tenants. The Landlord's agent confirmed that the Tenants were allowed to deduct \$200.00 from their February 2016 rent for repairs they had completed to the rental unit.

The female Tenant testified that the repairs they completed were worth more than \$200.00 as allowed by the Landlord. The female Tenant testified that their photographic evidence would have proved otherwise. The Tenants confirmed that they did not vacate the rental unit at the end of February 2016 because they could not afford to move to another place. When the Tenants asserted that they had been given permission by the Landlord to not pay rent, which the Landlord disputed, the Tenants confirmed that they had nothing in writing which allowed them to withhold rent.

Analysis

Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement **whether or not** a landlord complies with the Act or unless a tenant has authority under the Act to withhold or deduct rent.

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 must vacate the rental unit on the vacancy date of the Notice.

I have examined the Notice, and I find that the form used and the contents within comply with the requirements of Section 52 of the Act. I also accept the undisputed evidence that the Tenants were personally served with the Notice on January 2, 2016. Therefore, the Tenants would have had until January 7, 2016 to pay the outstanding rent on the Notice or make an Application to dispute the Notice.

There is no evidence before me that the Tenants paid the overdue rent or disputed the Notice. I also find that the Act does not allow the Tenants to withhold rent for repairs not completed by the Landlord as provided by Section 26(1) of the Act. Furthermore, I find the Tenants provided insufficient evidence that they had authority under the Act to withhold their rent. There are no written documents before me that the Landlord gave explicit consent for the Tenants to not pay rent. Furthermore, in this case, there is no evidence before me that the Landlord was responsible for seeking out rent from the Tenants either directly or from social services. If the Tenants were unable to make January 2016 rent payment then they should bear the responsibility to ensure that a third party who is assisting in making that payment does so pursuant to the tenancy agreement.

As a result, I find the Tenants are conclusively presumed to have accepted that the tenancy ended on the vacancy date of the Notice. As this date has now passed and the Tenants are in rental arrears, the Landlord is entitled to an Order of Possession which is effective **two days after service on the Tenants**. This order must be served to the Tenants and may then be filed for enforcement in the BC Supreme Court as an order of that court if the Tenants fail to leave.

In relation to the Landlord's monetary claim for unpaid rent, I find that the evidence before me is that the Tenants have failed to pay rent for four months starting on January 2016. After taking into consideration that the Landlord allowed the Tenants \$200.00 to deduct from February 2016 rent for repairs completed by the Tenants, even though the February 2016 rent was not paid, I find the Landlord is entitled to **\$4,400.00** in unpaid rent. As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$100.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$4,500.00**.

As the Landlord already holds the Tenants' **\$550.00** security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is awarded a Monetary Order for the outstanding balance of **\$3,950.00**. This order must be served on the Tenants 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.

Conclusion

The Tenants failed to pay rent as required by the Act or dispute the Notice. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenants. The Landlord is allowed to keep the Tenants' security deposit and is granted a Monetary Order for the outstanding amount awarded of \$3,950.00.

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: April 12, 2016

Residential Tenancy Branch