



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 an Application for Dispute Resolution (the “Application”) made by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, to keep the Tenants’ security deposit, and to recover the filing fee from the Tenants.

One of the Landlords and one of the Tenants appeared for the hearing and provided affirmed testimony. The Tenant confirmed personal receipt of the Landlord’s Application and confirmed that he had not provided any evidence prior to this hearing.

The parties were informed of the instructions for the conduct of the proceedings and no questions were raised about the process. The parties were given an opportunity to present evidence and make submissions to me in relation to the evidence provided.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession and a Monetary Order for unpaid rent?
- Are the Landlords 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 June 15, 2013 on a month to month basis. A written tenancy agreement was completed and rent is payable by the Tenants in the amount of \$1,500.00 on the first day of each month. The Tenants paid the Landlords a security deposit of \$750.00 which the Landlords still retain.

The Landlord testified that the Tenants were in \$600.00 rental arrears for March 2016. The Tenants then failed to make full payment for April 2016 rent. As a result, the Landlords served the Tenants personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"). The Notice was provided into evidence and details a vacancy date of April 30, 2016 due to \$2,100.00 due on April 1, 2016.

The Landlord testified that in addition, the Tenants failed to pay rent for May and June 2016 bringing the total amount of rental arrears to \$5,100.00. However, the Tenants did make partial rent payments on May 17, 2016 in the amount of \$1,000.00 and \$2,000.00 was paid on June 6, 2016. This reduces the amount of rental arrears to \$2,100.00.

The Tenant confirmed receipt of the Notice on April 22, 2016 and did not dispute the amount of rental arrears claimed by the Landlords. The Tenant explained that he had been recently sick and was struggling to make rent payments but that he was trying his best to keep up the payments because he son goes to the local school and he wants to stay in the rental unit.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement unless the tenant has authority to not pay it under the Act. Sections 46(4) and (5) of the Act state 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 provided into evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I am also satisfied that this was served to the Tenants personally pursuant to Section 88(a) of the Act.

In this case, I accept the Landlord's undisputed evidence that the Tenants have failed to pay the outstanding rental arrears in the amount of \$2,100.00. As a result, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the vacancy date of the Notice. As the vacancy date on the Notice has now passed and the Tenants are still occupying the rental unit, the Landlords are granted a two day Order of Possession. This order must be served to the Tenants and may then be filed and enforced in the BC Supreme Court as an order of that court if the Tenants fail to vacate the rental unit.

In relation to the Landlords' monetary claim for unpaid rent, I accept the Landlord's undisputed oral and written evidence that the Tenants failed to pay the rental arrears in the amount of \$2,100.00 which is awarded to the Landlords.

As the Landlords have been successful in their Application, I also award the \$100.00 Application filing fee pursuant to Section 72(1) of the Act. Therefore, the Landlords are awarded \$2,200.00 for their monetary claim.

As the Landlords already hold the Tenants' \$750.00 security deposit, I order the Landlords to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlords are awarded a Monetary Order for the outstanding balance of \$1,450.00. 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 Landlords' copy of this Decision.

Conclusion

The Tenants failed to pay rent as required by the Act. As a result, the Landlords are granted an Order of Possession effective two days after service on the Tenants. The Landlords are allowed to keep the Tenants' security deposit and are granted a Monetary Order for the outstanding balance of \$1,450.00.

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: June 14, 2016

Residential Tenancy Branch