



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MND OPR FF

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, received at the Residential Tenancy Branch on May 26, 2016 (the "Application").

The Landlords have applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"): a monetary order for damage to the unit, site or property; a monetary order for money owed or compensation for damage or loss; a monetary order for unpaid rent; an order permitting the Landlords to keep all or part of a security deposit or pet damage deposit; an order of possession for unpaid rent; and an order granting recovery of the filing fee paid by the Landlords.

Both Landlords attended the hearing on their own behalf. The Tenant also attended the hearing on her own behalf. All parties in attendance provided their solemn affirmation.

The Landlords provided oral testimony confirming the Application was served on the Tenant by registered mail on June 2, 2016. The Landlords submitted a Canada Post registered mail receipt, with tracking number, with their documentary evidence.

Pursuant to section 90 of the *Act*, documents served by registered mail are deemed to be received three days later. I find the Tenant was duly served with the Landlords' Application, the Notice of a Dispute Resolution Hearing and documentary evidence, on June 5, 2016.

The Tenant confirmed receipt of the Landlord's Application and documentary evidence. The Tenant did not submit any documentary evidence.

The parties were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Several orders are being sought by the Landlords. However, Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in the Landlords' Application was whether or not the tenancy will continue on the basis of unpaid rent, and whether or not the Landlords are entitled to a monetary order for unpaid rent. The remainder of the relief being sought by the Landlords is for compensation for damage to the property, which is premature as the Tenant continues to occupy the rental unit.

In light of the above, I find it appropriate to exercise my discretion to dismiss all but the Landlords' Application for an order of possession for unpaid rent, a monetary order for unpaid rent, and entitlement to recover the filing fee. The balance of the Landlord's Application is dismissed with leave to reapply at a later date.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent?
2. Are the Landlords entitled to an order of possession for unpaid rent?
3. Are the Landlords entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on February 1, 2016. Rent in the amount of \$400.00 per month is due and payable on the first day of each month. The Tenant did not pay a security deposit.

The Landlords' testified the Tenant has not paid rent for April, May and June 2016. J.K. testified that the bank account to which rent had been deposited previously was checked today and that no rent payments have been received. As of today's date, \$1,200.00 remains owing to the Landlords.

The Landlords advised they issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), which was served on the Tenant by posting a copy on the Tenant's door on May 17, 2016.

The Landlords submitted with their documentary evidence an email from their agent, dated May 17, 2016. The Landlords' agent lives next door to the Tenant. The email confirmed the 10 Day Notice was served by posting a copy to the Tenant's door around 1:30 p.m. on May 17, 2016. The Landlords' agent wrote the following to the Landlords: "They saw it and got it, cause I heard them swearing and saw her pointing at my place."

In response to the Landlords' submissions, the Tenant testified that she has paid rent. Further, she says that although she did not receive the 10 Day Notice, she is in the process of moving out of the rental unit.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on the balance of probabilities, I find the following:

The Landlords' evidence confirms the Tenant was served with a 10 Day Notice by posting a copy on the Tenant's door. Pursuant to section 90 of the *Act*, documents served in this manner are deemed to be received three days later. I find the 10 Day Notice was duly served on the Tenant on May 20, 2016.

On receipt of a notice to end tenancy for unpaid rent, section 46 of the *Act* requires a tenant to do one of two things within five days: pay the overdue rent or dispute the notice. A tenant who fails to do one of these things is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

Based on the evidence before me, I find the Tenant did not pay rent or dispute the 10 Day Notice in accordance with section 46 of the *Act*.

Accordingly, the Landlords are entitled to an order of possession, which will be effective one (1) day after service on the Tenant.

Further, I find the Landlords are entitled to a monetary order in the amount of \$1,300.00, which is comprised of \$1,200.00 in unpaid rent, and \$100.00 in recovery of the filing fee.

Conclusion

I grant the Landlords an order of possession, effective one (1) day after service upon the Tenant. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

I grant the Landlords a monetary order in the amount of \$1,300.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 28, 2016

Residential Tenancy Branch