



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LODGED INN LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by conference call in response to a Landlord's Application for Dispute Resolution (the "Application") requesting an Order of Possession based on a notice to end tenancy for unpaid rent. The company Landlord also applied for a Monetary Order for unpaid rent and utilities and to recover the filing fee from the Tenant. The Landlord amended the Application on February 9, 2017 to include a request to recover anticipated unpaid rent for March 2017.

Preliminary Issues

The owner of the company Landlord (the "Landlord") appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. However, there was no appearance for the Tenant during the 20 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified he served the Tenant by registered mail on February 10, 2017 with a copy of the Application and the Hearing Package. The Landlord provided the Canada Post tracking number into oral evidence, which is noted on the front page of this Decision, to verify this method of service. The Landlord testified the Tenant had informed him prior to this hearing that he had a notice card left for him to pick up the documents from Canada Post and that he was intending to do this prior to this hearing.

Section 90(a) of the *Residential Tenancy Act* (the "Act") provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. Based on the undisputed evidence of the Landlord, I find the Tenant was deemed served with the required documents on February 15, 2017 pursuant to the Act.

The Landlord confirmed at the start of the hearing that he was requesting an Order of Possession based on a notice to end tenancy for cause, the cause being repeatedly late payment of rent, and that no notice to end tenancy for unpaid rent and utilities had been served to the Tenant. The Landlord also requested to keep the Tenant's security deposit in partial satisfaction of his monetary claim. Based on the foregoing, I amended the Landlord's Application to include a request for an Order of Possession based on the notice to end tenancy for cause and to retain the Tenant's security deposit. I did this pursuant to my authority under Section 64(3) (c) of the Act.

The Landlord also withdrew his claim for unpaid utilities as he only wanted to deal with unpaid rent in this hearing. The Landlord was given leave to re-apply for unpaid utilities in this tenancy.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started on September 1, 2015 on a month-to-month basis. A written tenancy agreement was signed and rent for the unit is payable by the Tenant in the amount of \$950.00 on the first day of each month. The Tenant paid a \$500.00 security deposit at the start of the tenancy which he still retains in trust.

The Landlord testified that the Tenant was habitually late paying rent in this tenancy and testified to multiple times the Tenant had paid rent late as supported by email evidence he had submitted for this hearing. As a result, the Tenant was served with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on December 31, 2016. The 1 Month Notice provided into evidence details a vacancy date of February 1, 2017 and the reason for ending the tenancy is because the Tenant has been repeatedly late paying rent.

The 1 Month Notice was served to the Tenant by putting it in the Tenant's mail box. The Landlord provided a Proof of Service document which was signed by a witness to verify this method of service.

The Landlord testified the Tenant has not disputed the 1 Month Notice and the Tenant is still occupying the rental unit without paying rent. Therefore, the Landlord seeks an Order of Possession to end the tenancy.

The Landlord testified the Tenant has failed to pay rent for January 2017 in the amount of \$650.00 and has not paid rent for the months of February and March 2017. Therefore, the Landlord seeks a Monetary Order for unpaid rent of \$2,550.00.

Analysis

I have examined the 1 Month Notice and I find that it was completed with the correct information on the approved form as required by Sections 47(3) and 52 of the Act. I also accept the Landlord's oral and witness evidence that the 1 Month Notice was served to the Tenant by putting it in the Tenant's mail slot pursuant to Section 88(f) of the Act on December 31, 2016. Section 90(d) of the Act allows for a document to be deemed served three days after it is placed into the mail box. Therefore, I find the Tenant is deemed to have received the 1 Month Notice on January 3, 2017.

Section 46(2) of the Act requires that 1 Month Notice must include a period that incorporates a full rental months of notice. Therefore, as the Tenant is required to pay rent on the first day of each month, the vacancy date on the 1 Month notice is corrected to the effective date of February 28, 2017 pursuant to Section 53 of the Act.

Section 47(4) of the Act allows a tenant to dispute a 1 Month Notice by making an Application within ten days of receiving it. There is no evidence before me to indicate the Tenant applied to dispute the 1 Month Notice.

Section 47(5) of the Act states that if a tenant fails to make an Application within ten days, the tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 1 Month Notice and must vacate the rental unit by that date. Therefore, as the Tenant failed to make an Application under the time limits stipulated by the Act, the tenancy ended on the effective vacancy date of the 1 Month Notice.

As the Tenant continues to occupy the rental unit and is currently in rental arrears, the Landlord is granted 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 if the Tenant fails to voluntarily vacate the rental unit.

Section 26 of the Act requires a tenant to pay rent under a tenancy agreement whether or not the landlord complies with the Act. In relation to the Landlord's monetary claim, I

accept the Landlord's undisputed evidence the Tenant has failed to pay rent in the amount of \$2,550.00.

Since the Landlord has been successful in this Application, I also grant the recovery of the \$100.00 filing fee for the cost of having to make this Application. Therefore, the total amount awarded to the Landlord is \$2,650.00. As the Landlord already holds \$500.00 in the Tenant's 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 issued with a Monetary Order for the remaining balance of \$2,150.00. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make voluntary payment.

Conclusion

The Tenant did not dispute the 1 Month Notice and continues to occupy the rental unit without paying full rent. Therefore, the Landlord is granted an Order of Possession effective two days after service on the Tenant. The Landlord is also awarded unpaid rent in the amount of \$2,550.00 and the filing fee.

The Landlord may achieve this relief by keeping the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of \$2,150.00. Copies of the above orders are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by the Landlord.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 08, 2017

Residential Tenancy Branch