



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

A hearing was convened to deal with the landlord's application filed June 7, 2017 under the *Residential Tenancy Act* (the "Act") based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 8, 2017.

The landlord applied for an order of possession for unpaid rent and a monetary order for unpaid rent and utilities. He also sought recovery of the application filing fee.

The tenants did not attend the hearing. The landlord attended and was given a full opportunity to be heard, to present affirmed testimony and documentary evidence, and to make submissions.

As the tenants did not attend, service of the landlord's application and the notice of hearing were considered. The landlord provided affirmed testimony that he served each of the tenants by registered mail at the rental unit address. Canada Post registered mail receipts dated June 9, 2017 were in evidence for both mailings. There was also evidence that the tenants had refused to accept service. I accept that the tenants were each served with the landlord's application and notice of hearing on June 14, five days after mailing, as per s. 90 of the Act. Refusal to accept service does not override the deeming provision in that section of the Act. Nor is refusal to accept service a ground for review of a decision or order.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent and utilities?

Is the landlord entitled to a monetary award for unpaid rent and utilities?

Is the landlord entitled to recovery of the application filing fee?

Background and Evidence

There is no written tenancy agreement. The landlord testified that the respondent tenants were originally subtenants of other renters. The respondent tenants took over from the original renters in July, 2015 but did not sign a tenancy agreement. This was a month to month tenancy with rent of \$300.00 payable on the first day of each month. No security deposit was paid.

The landlord testified that the tenants were required to pay their own hydro bill and that they did at times pay money toward the hydro bill for their unit (a rambling house). The landlord wrote the tenants letters advising of the amount owing and attaching the bill. Copies of these letters were in evidence.

The landlord further testified that \$1,480.00 is outstanding for utilities over 2016 and at least \$1,607.35 is owing for utilities over 2017. He said that the bills in evidence from 2017 actually reflect the amount owing for the small suite in the house occupied by the tenants, because until recently the meters for these units had been accidentally reversed when they were installed in 2017. T

The landlord also stated that there is \$600.00 in rent outstanding for 2016 and \$1,800.00 outstanding for 2017, up to and including June. In support of the amounts claimed the landlord submitted demand letters to the tenants setting out their arrears, records of deposits made, and utility bills. Also in evidence was another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 18, 2016, which the landlord said he served but did not act upon. It records amounts owing for rent and utilities as of that date.

The landlord testified that he served the tenants with the 10 Day Notice under consideration today on May 8, 2017 by posting it on their door. A Proof of Service document signed by a witness was in evidence in support of this, as was an email from that witness. The 10 Day Notice has an effective date of May 21, 2017.

The landlord testified that after he served the tenants with the 10 Day Notice, one of them made a lump sum payment of \$500.00, but that was "too little, too late." He further testified that at this time there is \$4,987.45 outstanding in unpaid rent and utilities, taking into account the \$500.00 payment.

The landlord also advised that the tenants appear to have abandoned the rental property around the end of June, 2017.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. I found the landlord to be a very credible witness.

Based on the landlord's undisputed testimony and the Proof of Service document in evidence, I find that the tenants were served with the 10 Day Notice on May 11, 2017, three days after it was posted in accordance with s. 90 of the Act.

Section 46(5) of the Act provides that if a tenant does not apply to dispute a 10 Day Notice within five days of receipt, or pay the arrears in full, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date.

Here, the tenants did not make an application pursuant to section 46(4) within five days of receipt of the 10 Day Notice. Nor did they pay the amounts owing. In accordance with section 46(5) of the Act, the failure of the tenants to take either of these actions within five days led to the end of this tenancy on **May 21, 2017**, the effective date on the 10 Day Notice.

The tenants and anyone on the premises were required to vacate the premises by that date. I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the Act. I find that the landlord's 10 Day Notice complies with section 52 of the Act. The landlord has advised that the tenants appear to have vacated but I grant this order out of an abundance of caution in the event it is required.

Sections 7(1) and 67 of the Act provide that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenants owe \$4,987.35, including monies owing for June, 2017 occupation. I award the landlord that amount.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order for the landlord for **\$5,087.45**, inclusive of the filing fee. The tenants must be served with this order as soon as possible. Should the tenants fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 03, 2017

Residential Tenancy Branch