



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

The landlords applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The landlords ask me for an order of possession of the rental unit, excluding the tenants.

The landlords appeared at the hearing on 17 April 2023. The tenants did not appear.

Preliminary Matter

I proceeded with this hearing in the absence of the tenants. This is why I did so.

The landlords told me that they served the notice of this hearing on the tenants by posting a copy of it on the door of the rental unit. They supported this with a photograph showing an envelope affixed to a door (which the landlords told me was the door of the unit) and a witness statement.

Rule 7.3 of the RTBs Rules of Procedure reads:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Relying upon this rule, and satisfied that the tenants had been properly served with notice of this hearing, I decided to conduct the hearing in the absence of the tenants.

Issue to be Decided

Is the tenancy at an end?

Background and Evidence

The landlords agreed to rent this unit to the tenants for \$2,250.00 *per* month. And the parties agreed that rent is due on the first day of each month.

On 1 January 2023, the landlords say that the tenants failed to pay rent. Sometime in mid-January, the tenants paid \$200.00 of the rent. And then sometime before 20 January, the tenants paid another \$250.00 of the rent. This left \$1,600.00 rent owing for January.

As a result, the landlords drew up a 10-day Notice to End Tenancy for Unpaid Rent [the 'Notice']. In drawing the Notice, the landlords:

1. used the form approved by the RTB;
2. signed and dated the Notice;
3. recorded the address of the rental unit;
4. recorded the effective date of the Notice as 31 January 2023; and
5. stated the basis for the Notice as the tenants' failure to pay rent.

The landlords served this Notice by attaching it to the door of the unit on 20 January.

Over the next couple of months, the tenants paid varying amounts toward rent. But ultimately, the landlords told me, the tenants failed to pay a total of one month's rent (the rent owing for March).

There was no evidence that the tenants paid January's outstanding rent before 24 January, or that they disputed the Notice.

Analysis

Based on the evidence before me, I find that the Notice is an effective notice, and that the landlords served it on the tenants on 20 January.

There is no evidence that the tenants applied for dispute resolution after receiving this Notice, or that they paid rent within five days of receiving the Notice.

According, therefore, to section 47 (5) of the *Residential Tenancy Act* [the 'Act'], the tenants are conclusively presumed to have accepted that the tenancy ended on 31 January 2023.

Despite the tenancy ending, the evidence shows that the tenants continued to occupy the unit, and made varying payments to the landlords since the end of January. But at the time of this hearing, the tenants still owed rent for March. So, the uncontroverted evidence is that the tenants owe the landlords \$2,250.00.

Conclusion

Per section 55 (2) (b) of the Act, I make an Order of Possession in favour of the landlords. This order is effective two days after the landlords serve it on the tenants. If the tenants or any occupant of the rental unit fail to comply with my order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

I also order that the tenants pay to the landlords \$2,250.00 for unpaid rent *per* section 55 (4) (b) of the Act.

I authorise the landlords to retain the tenants' security deposit of \$1,125.00 in partial satisfaction of this sum *per* section 72 (2) (b) of the Act.

The landlords must serve this order on the tenants as soon as possible. If the tenants do not comply with my order, then the landlords may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the landlords can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 17 April 2023

Residential Tenancy Branch