



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 dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord WG (the landlord) appeared. The landlord testified that he had authority to appear on behalf of both landlords.

The landlord testified that he served the tenant with the dispute resolution package on 28 November 2014 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. The tenant admitted that he had received the dispute resolution package, but stated that he did not go to the post office to retrieve the documents until 16 December 2014 because he did not know that the posting was important. This reason is insufficient to rebut the presumption of deemed service in section 90 of the Act. Accordingly, the tenant was deemed to have received the dispute resolution package on 3 December 2014, the fifth day after its mailing. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Preliminary Issue – Tenant's Evidence

The tenant filed digital evidence to the residential tenancy branch on 19 December 2014. The tenant testified that he attempted to serve the landlords with his evidence by personally delivering the evidence to the landlords. The landlord testified that his place of business is a duplex with its own address. The landlord testified that there is a mail slot for documents there. The tenant testified that he did not want to leave the documents there because it appeared to him that it was a multi-dwelling residence and no specific unit number was given for the landlords. The tenant testified that he believed the mail slot was a common use area and did not want to leave the documents there. Thus, the landlords did not receive the documents.

This evidence was not served within the seven-day deadline prescribed by rule 3.15 of the *Residential Tenancy Branch Rules of Procedure* (the Rules). The evidence consists of various notices posted to the residential property door, a video recording made 24 November 2014, and a transcript of the recording.

Digital evidence is subject to rule 3.10. Rule 3.10 requires that a party that wishes to rely on digital evidence must provide the other party with at least seven days with full access to the materials. In this case, the landlords have not had seven days with the evidence.

Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 allows me to admit late evidence where it is new, relevant, and not available at the time evidence was due. This evidence is not relevant to this application. As such, I decline to exercise my discretion to admit the late evidence.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to retain all of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Relevant Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the landlord's claim and my findings around it are set out below.

The landlords have a tenancy arrangement with the owner of the residential property. The landlords have an arrangement with the owner whereby the landlords are permitted to sublet individual rooms to tenants. The tenant has an oral tenancy agreement with the landlords to occupy one bedroom. The areas outside the individual bedrooms are common areas for the co-tenants to share.

This tenancy began in mid-August 2014. The tenant paid partial rent for August and provided a security deposit of \$237.50. Monthly rent of \$475.00 was due on the first. The tenant paid rent for September 2014 and rent of \$237.50 for October 2014. The tenant did not pay the remainder of the rent for October 2014, rent for November 2014, or rent for December 2014. The landlord testified that total rent arrears are \$1,187.50.

The tenant admitted that he did not pay rent for half of October, all of November and all of December.

On 17 November 2014, the landlords served the tenant with the 10 Day Notice by posting it to the tenant's door. The 10 Day Notice set out that it was being given for unpaid rent that was due 1 November 2014. The 10 Day Notice sets out an effective date of 27 November 2014. The landlords inverted some letters in the tenant's last name and incorrectly spelled the name on the 10 Day Notice.

The tenant testified that he could not pay the landlords their rent because he could not arrange place or time for the transaction. The tenant testified that the address provided by the landlords was a multiunit dwelling and that he could not provide rent to the landlords there. The tenant testified that he did not attempt to arrange a meeting with the landlord by telephone or by email to pay his outstanding rent. The landlord testified that the landlords are routinely around the residential property assisting with the other tenants that rent bedrooms. The tenant testified that he did not try to pay rent to the landlords when the tenant saw them there.

The tenant alleged that the landlords had violated various parts of the Act.

Analysis

The 10 Day Notice contained a defect in that the tenant's last name was spelled incorrectly. It is clear from both the tenant and landlord's testimony that the tenant and landlord both understood that the 10 Day Notice was to the tenant.

Subsection 68(2) of the Act allows me to amend a notice given under the Act that does not comply with the Act. In this case, the landlord inverted some of the letters in the tenant's last name. This mistake does not go to the substance of the 10 Day Notice. The tenant ought to have known that the 10 Day Notice was issued to him. For these reasons, I am exercising my discretion to amend the 10 Day Notice to the tenant's correct last name.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenants multiple allegations regarding the landlords' behaviour in respect of this tenancy are not relevant for the purposes of determining the landlords' application as the alleged violations of the Act, if proven, would not allow the tenant to deduct amounts from rent.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by the corrected effective date of the 10 Day Notice, 30 November 2014. As that has not occurred, I find that the landlords are entitled to a two-day order of possession.

The landlords have proven that the tenant has rent arrears totaling \$1,187.50. The landlords are entitled to recover this amount from the tenant.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application.

The landlords applied to keep the tenant's security deposit. I allow the landlords to retain the security deposit of \$237.50 in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,000.00 under the following terms:

| Item | Amount |
|---|-------------------|
| Unpaid October Rent | \$237.50 |
| Unpaid November Rent | 475.00 |
| Unpaid December Rent | 475.00 |
| Offset Security Deposit Amount | -237.50 |
| Recovery of Filing Fee for this Application | 50.00 |
| Total Monetary Order | \$1,000.00 |

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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

Dated: December 23, 2014

Residential Tenancy Branch

