



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD O FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord wrote the following in the details of the dispute:

The Landlord requests an Order of Possession, as the tenant has not paid rent and has not vacated the property.

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box to *end the tenancy and obtain an Order of Possession for unpaid rent* when completing the application, as they clearly indicated their intention of seeking to recover the payment for occupancy after the effective date of the 10 Day Notice. Therefore, I amend the Landlord's application to include the request to end the tenancy and obtain an Order of Possession for unpaid rent for pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 27, 2015, by the Landlord to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; to keep the security and/or pet deposit and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by four agents for the Landlord. Each agent gave affirmed testimony, therefore, for the remainder of this decision, terms or references to the Landlord importing the singular shall include the plural and vice versa.

The Landlord submitted evidence that the Tenant was served with copies of their application, notice of hearing documents, and all of their evidence by registered mail on January 29, 2015. Canada Post receipts were provided in the Landlord's evidence and it was confirmed that the Canada Post tracking website indicated that the Tenant signed for the registered mail on February 2, 2015. Based on the submissions of the Landlords I find the Tenant was sufficiently served notice of this proceeding and I continued in absence of the Tenant.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a month to month tenancy that began on March 1, 2014. Rent of \$850.00 was due on or before the first of each month and on February 19, 2014 the Tenant paid \$425.00 as the security deposit plus \$425.00 as the pet deposit.

The Landlord testified that when the Tenant failed to pay their January 1, 2015, rent the Landlord posted a 10 Day Notice to the Tenant's door on January 13, 2015. Shortly after posting the 10 Day Notice the Landlord was notified that the Tenant's December 1, 2014 rent payment was returned NSF, increasing the amount owed to \$1,700.00 (2 x 850.00) plus a \$25.00 NSF charge for the return of the December payment. The Landlord deposited the Tenant's January 1, 2015 payment and that too was returned NSF so another \$25.00 NSF charge was applied to her account, as provided for in section 10 of the tenancy agreement.

The Landlord stated that the Tenant has since made payments towards the outstanding rent and NSF charges as follows: \$900.00 was paid January 30, 2015 and \$825.00 was paid February 5, 2015, which left a balance owing of \$25.00 (\$1,700.00 + \$25.00 + \$25.00 - \$900.00 - \$825.00). The Landlords testified that the Tenant was issued a receipt for "use and occupancy only" for each payment received and the Tenant was told that the Landlord would be proceeding with ending the tenancy.

The Landlord seeks the Order of Possession effective February 28, 2015 and the \$25.00 owed for the outstanding balance.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on January 16, 2015, three days after it was posted to the door, and in absence of full payment by January 21, 2015, the effective date of the Notice was January 26, 2015.

The Tenant did not dispute the Notice and although the Tenant made payments towards the arrears she did not pay the full amount owed within the required five day period. Those payments were received as use and occupancy only and not rent. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, January 26, 2015, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*.

The Landlord has accepted payment for use and occupancy for the full month of February 2015. Accordingly, I approve the Landlord's request for an Order of Possession effective **February 28, 2015**.

The Landlord claimed accumulated unpaid rent and late payment charges of \$2575.00. The Tenant has since made payments towards the outstanding balance due leaving an amount owing of \$25.00. Based on the aforementioned, I award the Landlord the unpaid balance due of **\$25.00**.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Landlord has been granted an Order of Possession effective **February 28, 2015, after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a monetary award for **\$75.00** (\$25.00 + \$50.00). This onetime award may be retained from the Tenants' security deposit as full satisfaction of the monetary award.

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: February 20, 2015

Residential Tenancy Branch

