



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTRAL OKANAGAN KIWANIS SERVICE SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on February 23, 2015. The Landlord applied for: an Order of Possession for cause; a Monetary Order for unpaid rent; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep the Tenant’s security deposit; and to recover the filing fee from the Tenant.

Legal Counsel and the Building Administrator both appeared for the Landlord; Legal Counsel made submissions on behalf of the Landlord and the Building Administrator provided affirmed testimony. There was no appearance for the Tenant during the 18 minute duration of the hearing or any submission of evidence by him prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord for this hearing.

Legal Counsel explained that a copy of the Application and the Notice of Hearing documents were served by registered mail on March 2, 2015 to the Tenant’s rental unit. An “Affidavit of Service” document was provided into written evidence by the party serving the paperwork for this hearing as well as the Canada Post tracking receipt. I accept the undisputed evidence of the Landlord that the Tenant was duly served in accordance with Section 89(1) (c) of the Act.

Section 90(a) of 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. As a result, based on the undisputed evidence of the Landlord, I find that the Tenant was deemed served with the required documents on March 7, 2015.

I continued the hearing in the absence of the Tenant and heard the undisputed evidence and submissions of the participants during the hearing.

Issue(s) to be Decided

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

Background and Evidence

The Building Administrator testified that this tenancy began on December 1, 2010 on a month to month basis. The Tenant paid the Landlord \$250.00 as a security deposit at the start of the tenancy which the Landlord still retains.

A written tenancy agreement was completed and the Building Administrator testified that the Tenant started the tenancy by paying subsidized rent. In July 2014, the Tenant was required to pay subsidized rent in the amount of \$206.00 on the first day of each month. However, the Tenant only made a partial payment and failed to pay any rent for August, September, October and November 2014. The Building Administrator testified that by December 1, 2014, the Tenant was in rental arrears in the amount of \$780.00.

However, on December 1, 2014, the Tenant made rent payment in the amount of \$620.00 which left an outstanding balance for December 2014 rent in the amount of \$160.00.

The Building Administrator testified that in December 2014, the Tenant had also failed to provide the necessary paperwork to qualify for subsidized rent. Therefore, in accordance with B.C Housing regulations, the Tenant's rent returned to the market value of \$550.00 payable by the Tenant starting on January 1, 2015.

The Building Administrator testified that the Tenant also failed to pay rent for January, February and March 2015 and now seeks a Monetary Order for rental arrears in the amount of **\$1,810.00** $((\$550.00 \times 3) + \$160.00)$.

The Building Administrator testified that on January 14, 2015, the Tenant was served with a 1 Month Notice to End Tenancy for Cause (the "Notice"). The Notice was provided into written evidence and shows that the reason for ending the tenancy was because the Tenant's repeatedly late paying rent and that there was a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so was given to the Tenant.

The Building Administrator explained that the breach of the material term that was elected on the Notice related to the repeated nonpayment of rent by the Tenant.

The Notice details a vacancy date of February 14, 2015. The Building Administrator testified that the Notice had been posted to the Tenant's door with a witness who completed a Proof of Service document verifying this method of service. As a result, the Landlord now seeks an Order of Possession to end the tenancy.

Analysis

I have examined the Notice and I find that the contents of the Notice complied with the requirements of Section 52 of the Act. I accept the Building Administrator's evidence that the Notice was served to the Tenant by posting it to the Tenant's rental unit door with a witness on January 14, 2015.

Section 90(c) of the Act provides that a document posted to a door is deemed to be received three days later. Therefore, I find the Tenant was deemed served with the Notice on January 17, 2015. Section 47(2) of the Act requires that the time period the Notice becomes effective must be for a period of one clear rental month. Therefore, pursuant to Section 53 of the Act, the effective vacancy date of the Notice is corrected from February 14, 2015 to February 28, 2015.

Section 47(5) of the Act explains that if a tenant fails to make an Application to dispute the Notice, then they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice. There is no evidence before me that the Tenant made an Application to dispute the Notice. Therefore, I accept the evidence that the Tenant has repeatedly failed to pay rent and is therefore, conclusively presumed to have accepted the Notice.

As the effective vacancy date of the Notice has now passed, I find the Landlord is entitled to an Order of Possession which is effective **two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental suite.

In relation to the Landlord's monetary claim, I accept the undisputed evidence that the Tenant is in rental arrears for the amount of **\$1,810.00**. As a result, the Landlord is awarded the rental arrears claimed.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application, pursuant to

Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$1,860.00**.

As the Landlord already holds **\$250.00** in the Tenant's security deposit, pursuant to Section 38(4) (b) of the Act, I order the Landlord to retain this amount in partial satisfaction of the claim awarded. As a result, the Landlord is granted a Monetary Order for the outstanding balance of **\$1,610.00** (\$1,860.00 - \$250.00). This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court if the Tenant fails to make payment.

Conclusion

The Tenant has repeatedly not paid rent. Therefore, the Landlord is granted an Order of Possession effective two days after service on the Tenant.

The Landlord may keep the Tenant's security deposit and is granted a Monetary Order pursuant to Section 67 of the Act for the outstanding rental arrears in the amount of \$1,610.00.

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: March 30, 2015

Residential Tenancy Branch

