



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, OPC, MNR, FF (Landlord's Application)
MT, CNR, MNR, FF (Tenants' Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenants on March 17, 2015 and by the Landlord on March 31, 2015.

The Landlord applied for: an Order of Possession for unpaid rent and utilities and for cause; a Monetary Order for unpaid rent and utilities; and, to recover the filing fee from the Tenant.

The Tenants applied for the following: to cancel the notice to end tenancy for unpaid rent and utilities; for more time to cancel the notice to end tenancy; for a Monetary Order for the cost of emergency repairs; and, to recover the filing fee from the Landlord.

Preliminary Issues

Two agents for the Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Tenants despite the Tenants' Application being scheduled for the same time as the Landlord's Application. As there was no appearance for the Tenants during the 42 minute duration of the hearing, I dismissed the Tenants' Application without leave to re-apply.

As the Tenant named on the Landlord's Application did not appear for the hearing, I turned my mind to the service of documents by the Landlord. The Landlord's agents explained that the Tenant had been served with a copy of the Landlord's Application, the Notice of Hearing documents, and their written evidence by registered mail to the rental unit address on March 31, 2015. The Landlord's agents provided the Canada Post tracking number in oral evidence which was noted on the file, as evidence to support this method of service.

Section 90(a) of the *Residential Tenancy Act* (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’s agents, I find that the Tenant was deemed served with the required documents on April 5, 2015 pursuant to Section 89(1) (c) of the Act.

The Landlord’s agents explained at the start of the hearing that they would like to retain the Tenant’s security deposit as part of their monetary claim. As the Tenant’s security deposit can be awarded by me under Section 72 of the Act, I amended the Landlord’s Application in order to deal with this request during the hearing, pursuant to my authority under Section 64(3) (c) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent for March and April 2015?
- Is the Landlord entitled to keep the Tenant’s security deposit in partial satisfaction of the Landlord’s monetary claim?

Background and Evidence

The Landlord’s agents testified that this tenancy started on June 1, 2012 for a fixed term of one year after which it continued on a month to month basis. A written tenancy agreement was completed which established that rent is payable by the Tenant in the amount of \$975.00 on the first day of each month. The Tenant paid a security deposit of \$487.50 on May 15, 2012 which the Landlord still retains.

The Landlord’s agents testified that the Tenant failed to pay rent on March 1, 2015 in the amount of \$975.00. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) by posting it to the Tenant’s door on March 11, 2015.

The Notice was provided into written evidence and had a vacancy date of March 21, 2015 due to unpaid rent in the amount of \$975.00. The Landlord’s agents testified that the Tenant had also failed to pay rent for April 2015. As a result, the Landlord now seeks to recover from the Tenant \$1,900.00 in unpaid rent.

The Tenants had made the Application to dispute the Notice on March 17, 2015. The Tenants' Application indicates that the Tenant received the Notice on March 11, 2015.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement. Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and must vacate the rental unit on the vacancy date of the Notice.

Having examined the copy of the Notice provided into written evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's agents' undisputed evidence that the Notice was served to the Tenant by attaching it to the rental unit door on March 11, 2015 in accordance with Section 88(g) of the Act.

The Tenant confirms in her Application that the Notice was received on March 11, 2015. As explained and outlined in the Notice, the Tenant would have had until March 16, 2015 to pay the outstanding rent on the Notice or make an Application to dispute the Notice. However, the Tenant did not make the Application until March 17, 2015.

Although the Tenant did apply for more time to cancel the Notice, the Tenant failed to appear for the hearing to prove that she had grounds to apply outside of the five day time limit afforded to the Tenant by Section 46(4) of the Act.

Therefore, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the Notice. As the vacancy date on the Notice has now passed and the Tenant has failed to pay rent for April, 2015, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant.

This order must be served on the Tenant and can then be enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit. As the tenancy has been ended through the notice to end tenancy for unpaid rent, I did not examine or make findings on the Landlord's notice to end tenancy for cause as this is now a moot issue.

The Landlord is also awarded the unpaid rent for the months of March and April 2015 in the amount of **\$1,900.00**. As the Landlord has been successful in proving unpaid rent, 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 **\$2,000.00** (\$975.00 + \$975.00 + \$50.00).

As the Landlord already holds the Tenant's **\$487.50** security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. The Landlord is issued with a Monetary Order for the outstanding balance of **\$1,512.50** (\$2,000.00 - \$487.50). This order must be served on the Tenant and may then be filed in the Small Claims Court and enforced as an order of that court.

Conclusion

The Landlord is granted an Order of Possession. The Tenant has breached the Act by not paying rent. Therefore, the Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the outstanding balance of rent and the filing fee in the amount of \$1,512.50.

The Tenants' Application is dismissed in its entirety **without** leave to re-apply as the Tenants failed to appear for the hearing. Copies of the above orders are attached to the Landlord's copy of this decision.

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: April 22, 2015

Residential Tenancy Branch

