



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, OLC, CNR, FF

Introduction

This was a cross-application hearing.

On June 5, 2015 the tenants applied to cancel a 10 day Notice ending tenancy for unpaid rent issued on June 1, 2015 and an Order the landlord comply with the Act.

On June 9, 2015 the landlord applied requesting an order of possession for unpaid rent, a monetary order for unpaid rent and loss of rent revenue, to retain the deposit and to recover the filing fee cost.

The landlord provided affirmed testimony that on June 12, 2015 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail at the address noted on the application. A Canada Post tracking number and receipt was provided as evidence of service to each tenant.

The mail sent to the female tenant was unclaimed; the mail sent to the male tenant was not returned to the landlord. The tenants remain at the rental unit address.

A failure to claim registered mail does not allow a party to avoid service of documents. Therefore, pursuant to section 90 of the Act I find that both tenants are deemed to have been served with Notice of this hearing on the fifth day after mailing, effective June 17, 2015.

Neither tenant attended the hearing.

The landlord confirmed receipt of the tenant's notice of hearing and application for dispute resolution.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenants?

Background and Evidence

The tenancy commenced on March 1, 2013, rent is \$900.00 per month due on the 29th day of each month. Rent is paid by a government agency, directly to the landlord. Two cheques in the sum of \$450.00 each are provided to the landlord each month; one for each tenant. A copy of the tenancy agreement and addendum was supplied as evidence.

The agreement indicates that a security deposit in the sum of \$450.00 was due. The landlord said a balance of \$225.00 is owed for the deposit. The tenancy agreement indicates a pet deposit in the sum of \$250.00 was paid; this was not confirmed during the hearing.

The landlord stated that on June 1, 2015 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of June 12, 2015, was personally served by the landlord's agent with a witness present. A copy of a proof of service document signed by the agent, D.M. and witness F.M. was supplied as evidence. Service occurred at 3:30 p.m. at the rental unit. The tenants then disputed the Notice.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$675.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The landlord said the Notice included the balance of the deposit plus the balance of June 2015 rent owed. The sum owed in rent was \$450.00. The landlord did not receive the balance of rent owed for June 2015. The tenants did make several payments for rent owed in July and receipts for use and occupancy were issued. Copies of the receipts were supplied as evidence.

The landlord said that rent currently owed is \$450.00 that was due on May 29, 2015.

Analysis

Section 90 of the Act stipulates that a document given personally is deemed served on the day of personal delivery. Therefore, I find that the tenants received the Notice to end tenancy on June 1, 2015.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenants received this Notice on June 1, 2015, I find that the earliest effective date of the Notice is June 11, 2015.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on June 12, 2015, the date on the Notice, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenants disputed the Notice but did not attend the hearing in support of their application. Therefore, pursuant to section 46(5) of the Act, I find that the tenants are conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice; June 12, 2015.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$450.00 for June 2015 and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

As the landlord said a balance of \$225.00 is owed as a security deposit I find the landlord is holding a deposit in the sum of \$225.00.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$225.00 security deposit in partial satisfaction of the claim.

The landlord has been granted an order of Possession that is effective two days after service to the tenants. This order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order for the balance of \$275.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

As it was not established if the landlord is holding a pet deposit I have not made any deduction from that deposit. Pursuant to section 72 of the Act, I find the landlord is at liberty to deduct any pet deposit that is held in trust, from the sum owed.

As the tenants failed to attend the hearing in support of their application I find, pursuant to section 81(1)(c) of the Act, that the application is dismissed.

Conclusion

The landlord is entitled to an order of possession and monetary order for unpaid rent.

The landlord may retain the \$225.00 security deposit in partial satisfaction of the claim.

The landlord may apply any pet deposit toward the sum owed.

The landlord is entitled to filing fee costs.

The tenants' application is dismissed.

This decision is final and binding on the parties and 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: July 29, 2015

Residential Tenancy Branch

