



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, FF (Landlords' Application)
MT, CNR, CNC, 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 August 12, 2015 and by the Landlords on August 14, 2015.

The Landlords applied for: an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; to keep the Tenants' security and pet damage deposits; and, to recover the filing fee from the Tenants.

The Tenants applied to cancel a notice to end tenancy for unpaid rent and a notice to end tenancy for cause. The Tenants also applied for more time to cancel the notices to end tenancy and to recover the filing fee from the Landlords.

Preliminary Issues

Both Landlords appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, there was no appearance for the Tenants during the 13 minute duration of the hearing, despite the Tenants' Application being scheduled for the same time as the Landlords' Application. Therefore, I turned my mind to the service of documents by the Landlords.

The Landlords testified that the Tenants were served with their Application by registered mail on August 15, 2015. The Landlords testified that this was received and signed for by the Tenants. In addition, the Landlords provided a copy of the Canada Post tracking number as evidence for this method of service. Based on this undisputed evidence, I determined that the Landlords had served the Tenants pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). The hearing continued to hear the undisputed evidence of the Landlords.

The Landlords explained that the Tenants had paid all the outstanding rent. As a result, they withdrew their monetary claim including the request to keep the Tenants' security and pet damage deposits. However, the Landlords were still seeking an Order of Possession based on the notice to end tenancy for unpaid rent and a request for an Order of Possession based on a notice to end tenancy for cause which they had also served to the Tenants.

I note that the Tenants had applied to dispute the notice to end tenancy for cause. While the Landlord did not apply for an Order of Possession based on the notice to end tenancy for cause, I amended the Landlords' Application to include this request as the Tenants had applied to dispute this notice. I made this amendment to the Landlords' Application, pursuant to my authority under Section 64(3) (c) of the Act.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession?

Background and Evidence

The Landlords testified that this tenancy started on December 15, 2014 for a fixed term of one year which is due to expire on December 31, 2015. A written tenancy agreement was completed which established that rent is payable by the Tenants in the amount of \$1,800.00 on the first day of each month. The Tenants paid a security deposit of \$900.00 on December 15, 2014 and a pet damage deposit of \$900.00 on December 31, 2014, both of which the Landlords still retain.

The Landlords testified that the Tenants had paid late rent during this tenancy for the months of January, February, April, June, and August 2015. The Landlords provided supporting evidence of late payments related to these months.

The Landlords testified that on August 4, 2015 they served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") and a 1 Month Notice to End Tenancy for repeatedly late payment of rent (the "1 Month Notice"). These were served by registered mail to the Tenants' rental unit. The Landlords provided Canada Post receipts to verify this method of service.

The Landlords testified that the Tenants were served the 10 Day Notice for a failure to pay rent on August 1, 2015 and the 1 Month Notice was for all the repeated times the Tenants had failed to pay their rent on the first day of each month. Both notices to end tenancy were provided into evidence for this hearing.

The Landlords testified that the Tenants paid the outstanding rent for August 2015 on August 19, 2015 in cash. The Tenants were issued with a cash receipt which stated that the payment was received by the Landlords for use and occupancy only as the Landlords did not want to re-instate the tenancy. The Landlords testified that the Tenants paid late rent for September and October, 2015 on the day after rent was due. In these cases, the Tenants were again issued receipts that the rent was being accepted for use and occupancy only while they waited the outcome of this hearing.

The 1 Month Notice has a vacancy date of September 5, 2015 and the 10 Day Notice had a vacancy date of August 15, 2015. The Landlords confirmed that the Tenant had paid full rent for October 2015 on October 2, 2015.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act. 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 10 Day Notice provided into evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlords' undisputed evidence that the Notice was served to the Tenants by registered mail in accordance with Section 88(c) of the Act.

Section 90(c) of the Act provides that a document served by registered mail is deemed to have been received five days after it is mailed. Therefore, as the Landlords served the 10 Day Notice by registered mail on August 4, 2015 the Tenants would have had until August 14, 2015 to pay the overdue rent or make an Application to dispute the Notice.

While the Tenants did make an Application within the required time limit set by the Act, the Tenants failed to appear for the hearing and explain the reasons for not paying rent within the five day time limit. Rather, the evidence suggests that the Tenants paid the overdue rent on August 19, 2015 which was well outside the time limits in accordance with the Notice. I find the Landlords made it clear that this would not re-instate the tenancy. In addition, I find the Landlords' evidence satisfies me that the Tenants have repeatedly paid rent late within the last year of their tenancy. A tenancy cannot continue if the landlord continues to repeatedly receive late rent payable under a tenancy.

Therefore, I find the Landlords are entitled to an Order of Possession to end the tenancy. As the vacancy dates on the notices has now passed, but the Tenants have paid rent for October 2015, the Order of Possession is granted effective for October 31, 2015 at 1:00 p.m.

This order must be served on the Tenants and can then be enforced in the Supreme Court of British Columbia as an order of that court if the Tenants fail to vacate the rental unit. Copies of this order are attached to the Landlords' copy of this Decision

As there was no appearance for the Tenants during this hearing, I dismiss the Tenants' Application without leave to re-apply. As the Landlords have been successful in obtaining an Order of Possession, I find the Landlords are entitled to recover the \$50.00 filing fee from the Tenants. Pursuant to Section 72(2) (b) of the Act, the Landlords may obtain this relief by deducting this amount from the Tenants' security deposit at the end of the tenancy.

Conclusion

The Tenants have breached the Act by paying rent that does not comply with the Act. Therefore, the Landlords are granted an Order of Possession. The Landlords withdrew their monetary claim. The Landlords may recover their filing fee from the Tenants' security deposit.

The Tenants' Application is dismissed in its entirety **without** leave to re-apply as the Tenants failed to appear for the hearing.

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: October 26, 2015

Residential Tenancy Branch

