



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by conference call in response to a Landlords' Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent, and to recover the filing fee from the Tenant.

Preliminary Issues

One of the Landlords named on the Application appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Tenant during the 22 minute duration of the hearing or any submission of written evidence prior to the hearing. As a result, I turned my mind to the service of the documents for this hearing by the Landlord.

The Landlord testified the Tenant was served a copy of the Application and the Notice of Hearing documents by registered mail to the rental unit on October 16, 2015. This was done pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). The Landlord provided the Canada Post tracking receipt as evidence to verify this method of service.

The Landlord gave me permission to confirm service of the documents on the Canada Post website. This indicates that on November 5, 2015, the "*Item was refused by the recipient*". The Landlord also testified that they attempted to serve the Tenant with a copy of the documents personally but when he refused to open the door, the Landlord posted a copy to the rental unit door. The Landlord testified that a few days later the documents were gone and when they next saw the Tenant they informed the Tenant of this hearing who responded by laughing in their face.

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 the Tenant was deemed served with the required documents on October 21, 2015 pursuant to the Act.

The Landlord requested to amend the Application to increase the monetary claim to include unpaid rent for months that had elapsed after the Application was made; this was documented in the Landlord's Monetary Order Worksheet. As the Tenant would have been aware of these outstanding unpaid rent amounts, I allowed the Landlord to amend the Application for the increased amount to be considered in this hearing for the amount of \$1,200.00.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession and a Monetary Order for unpaid rent?

Background and Evidence

The Landlord testified that this was an oral tenancy on a month to month basis which started approximately 1.5 years ago. Rent was payable by the Tenant in the amount of \$300.00 on the first day of each month.

The Landlord testified that the Tenant failed to pay rent for September 2015. As a result, he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on September 25, 2015 by attaching it to the Tenant's door. The Notice was provided into evidence and shows a vacancy date of October 8, 2015 due to \$300.00 in unpaid rent that was due on September 1, 2015. The Landlord also provided a Proof of Service document which was signed by a witness to verify this method of service.

The Landlord testified that in addition, the Tenant has failed to pay rent for October, November and December 2015. Therefore, they now seek an Order of Possession to end the tenancy and a Monetary Order in the amount of \$1,200.00.

Analysis

I have carefully considered the undisputed affirmed testimony and the documentary evidence before me in this decision as follows. The Act defines a "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and

facilities, and includes a licence to occupy a rental unit. Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the Act.

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 they must vacate the rental unit on the effective date of the Notice.

Having examined the 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 undisputed oral and documentary evidence that the Notice was served to the Tenant by attaching it to the rental unit door.

Section 90(c) of the Act provides that a document served by attaching it to the door is deemed to have been received three days later. Therefore, I find the Tenant was deemed to have received the Notice on September 28, 2015 pursuant to the Act. Therefore, the vacancy date on the Notice of October 8, 2015 is correct.

There is no evidence before me that the Tenant either paid the outstanding rent shown on the Notice or made an Application to dispute it within the stipulated five day time limit provided by the Act after he was deemed to have received the Notice. As a result, 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, the Landlords are granted a two day Order of Possession. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

In relation to the Landlords' monetary claim for unpaid rent, I accept the Landlord's undisputed evidence that the Tenant failed to pay rent for September, October, November, and December 2015. Accordingly I award the Landlords **\$1,200.00** in unpaid rent.

As the Landlords have been successful in this claim, I also award the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlords is **\$1,250.00**.

The Landlords are issued with a Monetary Order for this amount. 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. Copies of both orders for service and enforcement are attached to the Landlords' copy of this decision.

Conclusion

The Tenant has breached the Act by failing to pay rent. Therefore, the Landlords are granted a two day Order of Possession and a Monetary Order for \$1,250.00.

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: December 10, 2015

Residential Tenancy Branch

