



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Boundary Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied an order of possession pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued by the landlord, a monetary order for unpaid rent, for authority to retain the tenants' security deposit, and for recovery of the filing fee paid for this application.

The landlord's agent (hereafter "landlord") attended the telephone conference call hearing; the tenants did not attend.

The landlord testified that they served each tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail and that the registered mail was unclaimed.

Based upon the submissions of the landlord, I accept the tenants were served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, authority to retain the tenants' security deposit, further monetary compensation, and for recovery of the filing fee paid for this application?

Background and Evidence

The landlord stated that the tenancy began on January 1, 2015, that monthly rent was \$1250.00, due on the first day of the month, and that the tenants paid a security deposit of \$625.00.

The landlord stated that on December 7, 2015, they served the tenants with the Notice, by attaching it to the tenants' door, listing unpaid rent of \$878.50 as of December 1, 2015. The effective vacancy date listed on the Notice was December 17, 2015. Into evidence, the landlord submitted a copy of the Notice.

Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenants were deemed to have received the Notice on December 10, 2015, and the effective move out date is automatically changed to December 20, 2015, pursuant to section 53 of the Act.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenants had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the landlord has received one subsidized rent payment and that beyond that, the tenants have not made any further rent payments since the Notice was issued; as of the date of the hearing, the tenants owed a rent deficiency of \$2078.50, which is an adjustment from their monetary claim as the landlord deducted the unpaid parking fees at the hearing after being informed that parking is not an issue included with rent. The landlord submitted tenant ledger sheets and several other Notices previously served on the tenants.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction;

authorization from an Arbitrator or expenditures incurred to make an “emergency repair”, as defined by the Act.

I find the landlord submitted sufficient, unopposed evidence that the tenants owed rent as claimed by the landlord, under the terms of the tenancy agreement, and did not pay.

When a tenant fails to pay rent due pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here.

As such, I find the landlord submitted sufficient, unopposed evidence to prove that the tenants were served the Notice, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, in this case, December 20, 2015.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenants.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord’s Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenants.

I accept the unopposed evidence of the landlord as to the amount of unpaid rent owed by the tenants under the tenancy agreement and find that the landlord is entitled to a monetary award of \$2128.50, comprised of unpaid rent and loss of rent revenue of \$2078.50 through January 2016, as the tenants have over held in the rental unit beyond the effective end of tenancy of December 20, 2015, and the \$50.00 filing fee paid by the landlord for this application.

I allow the landlord to retain the tenants’ security deposit of \$625.00, in partial satisfaction of their monetary award of \$2128.50, and grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for balance owed in the amount of \$1503.50, which is enclosed with the landlord’s Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small

Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlord's application for an order of possession and a monetary order for unpaid rent has been granted.

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: January 20, 2016

Residential Tenancy Branch

