



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 in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on December 11, 2015 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted to the Residential Tenancy Branch on December 10, 2015 or December 11, 2015 were sent to each Tenant, via registered mail, at the rental unit. The Landlord cited two tracking number that corroborates this statement. The Landlord stated that both packages were "refused by recipient" and were returned to the Landlord.

In the absence of evidence to the contrary, I find that these documents have been served to both Tenants in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenants did not appear at the hearing. A party cannot avoid service by refusing to accept registered mail.

The Landlord was advised that I was not in possession of the evidence the Landlord submitted in December of 2015. As the Residential Tenancy Branch does, on occasion, misplace evidence, the Landlord was given the opportunity to re-submit the original evidence package to the Residential Tenancy Branch. The Landlord stated that he will re-submit that evidence by the end of the day on January 05, 2016. The Landlord was advised that I will render a decision after I have had the opportunity to view the evidence.

The Landlord re-submitted the evidence package to the Residential Tenancy Branch on January 05, 2016. This package included a copy of the Ten Day Notice to End Tenancy that is the subject of this dispute.

Preliminary Matter

The Agent for the Landlord applied to amend the Application for Dispute Resolution to include all rent that is currently due. I find that it was reasonable for the Tenants to include that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has

accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent?

Background and Evidence

The Landlord stated that:

- this tenancy began on July 01, 2015;
- the Tenants agreed to pay monthly rent of \$675.00 by the first day of each month;
- the Tenants did not pay any rent for September or October of 2015 until October 24, 2015, at which time the Tenants paid \$300.00;
- the Tenants did not pay any rent for November of 2015 until November 07, 2015, at which time the Tenants paid \$200.00;
- the Tenants did not pay any rent for December of 2015 until December 05, 2015, at which time the Tenants paid \$150.00;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of October 23, 2015 was personally served to the male Tenant on October 13, 2015;
- the Ten Day Notice to End Tenancy declared that the Tenants owed \$1,350.00 in rent that was due on October 01, 2015; and
- the Tenants are still occupying the rental unit.

Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$675.00 by the first day of each month and that the Tenants still owe \$1,050.00 of the rent due for September and October of 2015. As the Tenants are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$1,050.00 in outstanding rent for September and October of 2015.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days, by providing proper written notice, if rent is not paid when it is due. On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was personally served to the male Tenant on October 13, 2015.

Section 46 of the *Act* stipulates that a tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I have no evidence that the Tenants exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenants accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession.

As the Tenants did not vacate the rental unit on the effective date of the Ten Day Notice, which was October 23, 2015, I find that the Tenants are obligated to pay rent, on a per diem basis, for the days the Tenants remained in possession of the rental unit. As the Tenants have already been ordered to pay rent for the period between October 23, 2015 and October 30, 2015, I find that the Landlord has been fully compensated for that period.

I find that the Tenants must also compensate the Landlord for the month of November of 2015, as they remained in possession of the rental unit for that month. On the basis of the undisputed evidence, I find that the Tenants paid \$200.00 in rent for November. I therefore find that they still owe \$475.00 in rent for that month.

I find that the Tenants must also compensate the Landlord for the month of December of 2015, as they remained in possession of the rental unit for that month. On the basis of the undisputed evidence, I find that the Tenants paid \$150.00 in rent for December. I therefore find that they still owe \$525.00 in rent for that month.

I find that the Tenants must also compensate the Landlord for the five days in January of 2016 that they have remained in possession of the rental unit for that month, at a daily rate of \$21.77, which equates to \$108.85. I decline to award compensation for the entire month of January, as it is entirely possible that the Tenants will vacate the rental unit on January 05, 2016.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon 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.

The Landlord has established a monetary claim, in the amount of \$2,208.85, which is comprised of \$2,158.85 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for \$2,208.85. In the event 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.

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 08, 2016

Residential Tenancy Branch

