



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of 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. The Landlords also applied: to keep the Tenant's security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the filing fee for the cost of making the Application from the Tenant.

Both Landlords appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance by the Tenant during the ten minute duration of the hearing or any submission of evidence. Therefore, I turned my mind to the service of the documents by the Landlord for this hearing.

The Landlords testified that they both witnessed the service of their Application and the Notice of Hearing documents being personally handed to the Tenant on December 23, 2015 by a third party. The third party provided a witness statement verifying this method of service. Based on the undisputed evidence of the third party and the oral testimony of the Landlords at this hearing, I am satisfied that the Tenant was served with the required documents for this hearing pursuant to Section 89(1) (a) of the Act. The hearing continued to hear the undisputed evidence of the Landlords.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Are the Landlords entitled to a Monetary Order for unpaid rent for December 2015 and January 2016?
- Are the Landlords entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlords both testified that this tenancy started in November 2015. Although no written tenancy agreement was entered into, the Landlords testified that this was an oral agreement whereby the Tenant was required to pay rent of \$1,100.00 on the first day of each month. The Tenant paid the Landlords a security deposit of \$550.00 which the Landlords still retain.

The Landlords testified that the Tenant failed to pay rent on December 1, 2015. As a result, the Landlords served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on December 5, 2015 by attaching it to the Tenant's door.

The Notice was provided into written evidence and shows an expected date of vacancy of December 15, 2015 due to \$1,100.00 in unpaid rent due on December 1, 2015. The Landlords also provided a Proof of Service Document which was signed by a witness who verified service in this manner.

The Landlords testified that the Tenant has not disputed the Notice and has not paid any rent for December 2015 or January 2016. As a result, the Landlords now seek to recover unpaid rent in the amount of \$2,200.00 as well as an Order of Possession to end the tenancy.

Analysis

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. Furthermore, Section 17 of the Act states that landlord may require a tenant to pay a security deposit as a condition of entering into a tenancy agreement. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the Act as the parties entered into an oral tenancy agreement.

Section 26(1) of the Act requires a tenant to pay rent 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 date to which the Notice relates.

Having examined the Notice, I find that the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlords' undisputed oral testimony and written evidence that the Notice was served to the Tenant by attaching it to the Tenant's door on December 5, 2015.

Section 90(c) of the Act allows documents served in this manner to be deemed received three days later. Therefore, I find that the Tenant is deemed to have received the Notice on December 8, 2015. Therefore, the Tenant had until December 13, 2015 to pay rent or make an Application to dispute the Notice. There is no evidence before me that the Tenant did either. Accordingly, the vacancy date on the Notice is corrected to December 18, 2015 pursuant to Section 53 of the Act.

As a result, I find that the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected vacancy date of the Notice. As this date has now passed and the Tenant is still residing in the rental unit, the Landlords are entitled to an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court.

I find the Landlords are also entitled to unpaid rent in the amount of \$2,200.00 claimed. As the Landlords have been successful in this matter, the Landlords are also entitled to recover 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 \$2,250.00. As the Landlords already hold the Tenant's \$550.00 security deposit, I order the Landlords to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act.

As a result, the Landlords are granted a Monetary Order for the remaining balance of \$1,700.00. 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. Copies of the above orders for service and enforcement are attached to the Landlords' copy of this decision.

Conclusion

The Tenant has failed to pay rent. As a result, the Landlords are granted an Order of Possession effective two days after service on the Tenant. The Landlords are allowed to keep the Tenant's security deposit and are granted a Monetary Order for the remaining balance of \$1,700.00.

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: January 08, 2016

Residential Tenancy Branch

