



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

On January 8, 2016 the Landlord made an Application for Dispute Resolution by Direct Request (the “Application”) requesting an Order of Possession and a Monetary Order for unpaid rent. This process involves a non-participatory hearing based on an undisputed notice to end tenancy for unpaid rent and documentary evidence.

The Application was considered by an Adjudicator on January 18, 2016. In an Interim decision rendered on the same date, the Adjudicator found the Landlord had served the Notice of Direct Request Proceeding documents to the Tenant by registered mail on January 11, 2016. However, the Adjudicator also determined that the Application could not proceed by way of a non-participatory hearing as the tenancy agreement provided by the Landlord did not disclose the date that rent was payable under the agreement. Therefore, the Application was scheduled by the Residential Tenancy Branch to be heard in this participatory hearing.

The Landlord appeared for the hearing and provided affirmed testimony and referred to documentary evidence which he had provided with his Application. There was no appearance by the Tenant during the 18 minute duration of the hearing or any submission of written evidence prior to the hearing. The Landlord testified that he had personally served the Notice of Hearing documents to the Tenant for this hearing at the start of February 2016 pursuant to Section 89(1) (a) of the Residential Tenancy Act (the “Act”). As a result, the hearing continued in the absence of the Tenant and I carefully considered the Landlord’s written and oral testimony in this decision as follows.

Preliminary Matters

The Landlord explained that he wanted to retain the Tenant’s security deposit and recover the filing fee for the cost of the Application. As the Direct Request process prohibits the Landlord from making an Application to keep the Tenant’s deposits and the

recovery of the filing fee, and this hearing was adjourned to a participatory hearing, I find that the Landlord is now entitled to make these claims.

Based on the foregoing, I find it appropriate to amend the Landlord's Application for a request to keep the Tenant's security deposit and to recover the filing fee, pursuant to my authority under Section 64(3) (c) of the Act.

The Landlord also wanted to increase his monetary claim to include unpaid rent for February 2016 as the Tenant has not paid this amount. Therefore, pursuant to Section 64(3) (c) of the Act and Rule 4.2 of the Residential Tenancy Branch Rules of Procedure, I amended the Landlord's Application to increase the amount of unpaid rent to \$3,000.00.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started on September 1 2015 on a month to month basis. The Tenant paid the Landlord a security deposit of \$500.00 at the start of the tenancy which the Landlord still retains. The Landlord testified that rent is payable in the amount of \$1,000.00 on the first day of each month.

The Landlord testified that the Tenant failed to pay rent for December 2015. As a result, he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on December 20, 2015. The Notice was personally served to the Tenant with a witness who signed a Proof of Service document to verify this method of service. The Notice was provided into evidence and shows a vacancy date of December 29, 2015 due to \$1,000.00 in unpaid rent that was due on December 1, 2015.

The Landlord testified that in addition, the Tenant has failed to pay rent for January and February 2016. Therefore he now seeks an Order of Possession and a Monetary Order in the amount of \$3,000.00.

Analysis

I have carefully considered the undisputed affirmed testimony and the documentary evidence before me in this decision as follows. 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 date to which the Notice relates.

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 witness evidence that the Notice was personally served to the Tenant on December 20, 2015. Therefore, the Tenant would have had until December 25, 2015 to either pay the outstanding rent on the Notice or make an Application to dispute the Notice. There is no evidence before me that the Tenant did neither.

As a result, I find the Tenant is conclusively presumed to have accepted the tenancy ended. Therefore, the Tenant would have had to vacate the rental unit on December 30, 2015, this being the corrected date on the Notice pursuant to Section 53 of the Act.

As the corrected vacancy date on the Notice has now passed and the Tenant is still residing in the rental unit without paying rent, the Landlord is 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 Landlord's monetary claim for unpaid rent, I accept the Landlord's undisputed oral and written evidence that the Tenant failed to pay rent for December 2015, January 2016, and February 2016. Accordingly I award the Landlord **\$3,000.00** in unpaid rent. As the Landlord has 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 Landlord is **\$3,050.00**.

As the Landlord holds the Tenant's security deposit of \$500.00, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the remaining balance of **\$2,550.00**. 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 if the Tenant fails to make payment. Copies of both orders for service and enforcement are attached to the Landlord's copy of this decision.

Conclusion

The Tenant has breached the Act by failing to pay rent. Therefore, the Landlord is granted a two day Order of Possession. The Landlord is allowed to keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of \$2,550.00.

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: February 09, 2016

Residential Tenancy Branch

