



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

Both parties appeared for the hearing and provided affirmed testimony. The Landlord testified that she sent the Tenant a copy of the Application and the Notice of Hearing documents to the Tenant by registered mail on December 23, 2015. The Tenant stated that he did not pick up the documents from the post office until January 24, 2016. However, the Tenant acknowledged that he did have sufficient time to respond to the Landlord's Application even though he confirmed that he had not provided any evidence prior to the hearing.

Based on the foregoing, I find the Landlord served the Tenant with the required documents for this hearing pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act") and that these were deemed to have been received by the Tenant five days later pursuant to the deeming provisions specified by Section 90(c) of the Act.

During the hearing, the Landlord explained that she wanted to keep the Tenant's security deposit and offset this against the rental arrears. The Landlord also confirmed that she wanted to claim for unpaid rent for the months of January and February 2016 which also had not been paid by the Tenant, thereby increasing her monetary claim for unpaid rent to \$2,700.00.

In response to the Landlord's above requests, I amended the Landlord's Application to include her request to keep the Tenant's security deposit and to increase her monetary claim for unpaid rent for three months. I did this pursuant to my authority under Section 64(3) (c) of the Act and Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure*.

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 parties agreed that this month to month tenancy started on August 1, 2013. Rent in the amount of \$900.00 is payable by the Tenant on the first day of each month. The Tenant paid the Landlord a security deposit of \$450.00 at the start of the tenancy which the Landlord still retains.

The Landlord testified that the Tenant failed to pay rent for December 2015. As a result, she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on December 10, 2015 by posting it to the Tenant's door on December 10, 2015 with a witness. The witness 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 15, 2015 due to \$900.00 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 she now seeks an Order of Possession and a Monetary Order in the amount of \$2,700.00.

The Tenant confirmed receipt of the Notice on December 10, 2015 and confirmed that he had not paid rent for the three months claimed by the Landlord. The Tenant testified that the Landlord's son was stealing from her and the Landlord did nothing about it. The Tenant testified that the Landlord had cut off his utilities, cable and internet and as a result, he lost his job and has been unable to pay rent. The Tenant testified that the Landlord has not provided him the means to dispose of his garbage.

Analysis

I have carefully considered the affirmed testimony of both parties and the Landlord's 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**, unless the Tenant has authority under the Act to deduct all or pay a portion of the rent.

In addition, 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 evidence that the Notice was served and received by the Tenant on December 10, 2015. Therefore, the Tenant would have had until December 15, 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 either. In relation to the testimony provided by the Tenant, I find the Tenant failed to disclose that he had any authority under the Act to not pay rent for the three months claimed by the Landlord.

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 the corrected vacancy date of the Notice, being December 20, 2015.

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 **\$2,700.00** 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 **\$2,750.00**.

As the Landlord holds the Tenant's security deposit of \$450.00, 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 **\$2,300.00**. 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 \$2,300.00.

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 10, 2016

Residential Tenancy Branch

