



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, 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 keep the Tenant's security deposit, for damages to the rental unit, and to recover the filing fee from the Tenant.

The Landlord and Tenant both appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Application by registered mail and confirmed that she had not provided any documentary evidence prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present evidence, make submissions to me, and cross examine the other party on the evidence provided.

The Landlord also confirmed that the monetary claim of \$4,375.00 only related to unpaid rent. Therefore, the Landlord withdrew the Application for damages to the rental unit as the Tenant has not yet vacated the rental unit. The Landlord is at liberty to re-apply for damages to the rental unit if the Tenant fails to leave the rental unit undamaged and unclean pursuant to Section 37(2) of the *Residential Tenancy Act* (the "Act").

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 November 21, 2014. The Tenant paid the Landlord a \$625.00 security deposit at the start of the tenancy and rent in the amount of \$1,250.00 is payable on the first day of each month.

The Landlord testified that the Tenant failed to pay rent for January 2016. As a result, she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on January 9, 2016. The Notice was posted to the Tenant's door 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 January 9, 2016 due to \$1,250.00 in unpaid rent that was due on January 1, 2016.

The Landlord testified that in addition, the Tenant also failed to pay rent for February and March 2016 resulting in rental arrears of \$3,750.00. The Landlord testified that the day before this hearing, the Tenant had paid the Landlord \$870.00 in cash for part of the rental arrears leaving a balance outstanding of \$2,880.00. As a result, the Landlord seeks an Order of Possession and a Monetary Order for this amount.

The Tenant confirmed the rental arrears that were outstanding and also confirmed receipt of the Notice. The Tenant testified that she did not have the money at the time because her common law husband had left the rental unit for her to pay the full rent. The Tenant testified that she was willing to pay the full rental arrears as she now had a roommate and was expecting monies from various other parties.

The Landlord was asked whether she wanted to continue with the tenancy on the promise that the Tenant would pay all the rental arrears. However, the Landlord was not willing to continue the tenancy as she is uncertain the Tenant can make payment or that the issue of nonpayment of rent would likely arise again in the future. The Landlord explained that she needed the rent money to pay her mortgage and she could not risk losing her house over unpaid rent either now or in the future.

The hearing was monetarily disputed as both parties, for some unknown reason, were cut off from the telephone conference line. The Tenant reiterated several times during the hearing that she should be allowed to stay in the rental unit because she was now in a position to pay rent. The Tenant also attempted several times during the hearing to re-assure the Landlord that this issue would not arise again in the future. However, the Landlord wanted to proceed with her Application requesting the Order of Possession and a Monetary Order for the unpaid rent.

Analysis

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 evidence that the Notice was served to the Tenant by posting it to the door.

Section 90(c) of the Act states that a document served by attaching it to the door is deemed to have received three days later. Therefore, the Tenant would have had until January 17, 2016 to either pay the outstanding rent on the Notice or make an Application to dispute the Notice. If the Tenant was unable to pay the outstanding rent at the time the Notice was served then the Tenant would have been required to move out of the rental unit on January 22, 2016.

There is no evidence before me that the Tenant complied with the Notice. I find that a willingness to pay rent either after the effective date of the Notice or several months later does not give me any power to deny the Landlord's request for an Order of Possession.

As a result, I find the Tenant is conclusively presumed to have accepted the tenancy ended. As the effective vacancy date on the Notice has now passed and the Tenant is still residing in the rental unit, 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 is in rental arrears for the amount of **\$2,880.00** at the time of this hearing. Accordingly I award the Landlord this amount.

As the Landlord has been successful in this claim, I also award the **\$100.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlords is **\$2,980.00**. As the Landlord holds the Tenant's security deposit of **\$625.00**, 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 **\$2,355.00**. 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 pursuant to the tenancy agreement and the Notice. 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 \$2,355.00. The Landlord withdrew the Application for damages to the rental unit and is at liberty to re-apply for this.

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: March 08, 2016

Residential Tenancy Branch

