



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent, a monetary Order for unpaid rent and a bylaw fine, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on February 17, 2016 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail to the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service to each tenant. That mail was returned to the landlord marked by Canada Post as unclaimed.

These documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 and 90 of the Act. Refusal or a failure to claim registered mail does not allow a party to avoid service.

Neither tenant appeared at the hearing.

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 and a bylaw fine?

May the landlord retain the security deposit paid by the tenants?

Background and Evidence

The tenancy commenced on November 1, 2013, rent is \$1,000.00 due on the first day of each month. The landlord is holding a security deposit in the sum of \$500.00. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on January 9, 2016 a 10 day Notice ending tenancy for unpaid

rent or utilities, which had an effective date of January 18, 2016, was served by registered mail. The landlord served the Notice by registered mail to the rental unit address. A copy of the envelope, including the tracking number for that mail, sent to both tenants, was supplied as evidence. The tenants did not claim the registered mail.

On January 9, 2016 at around noon that landlord stapled a copy of the Notice to the entry gate of the rental unit property. The tenants have a dog that can be aggressive, so the Notice was posted on the gate.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$4,650.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The landlord has claimed unpaid rent from September 2015 to January, 2016 in the sum of \$4,650.00.

A copy of an August 13, 2015 bylaw infraction for excessive noise was supplied as evidence. The landlord was fined \$100.00 for noise caused by the tenants. The tenants had said they would pay this fine but they have not.

The tenants paid \$350.00 in September 2015 and since that time have paid \$1,275.00, by way of three payments made in February 2016. The landlord is claiming the balance of unpaid rent from September 2015 to February 2016 in the sum of \$4,075.00.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. Therefore, I find that the tenants received the Notice to end tenancy on January 12, 2016; three days after the Notice was posted to the gate.

I find that the tenants were also served with a copy of the Notice effective January 15, 2016; five days after the Notice was sent via registered mail. A failure to claim registered mail does not allow a party to avoid service.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenants are deemed to have received this Notice on January 12, 2016, I find that the earliest effective date of the Notice is January 22, 2016.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of

this Notice to End Tenancy was January 22, 2016.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenant to vacate the rental unit on January 22, 2016, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenants exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended on the effective date of the Notice; January 22, 2016.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$4,075.00 from September 2015 to February 2016, inclusive (\$5,350.00 - \$1,275.00).

Section 4.2 of the Residential Tenancy Branch Rules of Procedure provides:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

Therefore, I find that the application is amended to include unpaid rent in the sum of \$1,000.00 for March 2016 and that the landlord is entitled to compensation in that sum.

Therefore, the landlord is entitled to total compensation in the sum of \$5,375.00 for rent owed from September 2015 to March 2016, inclusive (\$6,600.00 - \$1,275.00.)

I find that the landlord is entitled to compensation in the sum of \$100.00 for the bylaw fine that was issued as the result of noise caused by the tenants. I find pursuant to section 62(3) of the Act that the landlord cannot be held responsible for this breach.

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$500.00 security deposit in partial satisfaction of the claim.

The landlord has been granted an Order of possession that is effective two days after service to 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.

Based on these determinations I grant the landlord a monetary Order for the balance of \$5,075.00. In the event that 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.

Conclusion

The landlord is entitled to an Order of possession.

The landlord is entitled a monetary Order for unpaid rent and bylaw fine.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties and 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 24, 2016

Residential Tenancy Branch

