



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF; CNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- cancellation of the landlord's two 10 Day Notices to End Tenancy for Unpaid Rent, dated February 6, 2016 ("first 10 Day Notice") and February 7, 2016 ("second 10 Day Notice") (collectively "two 10 Day Notices"), pursuant to section 46.

The two tenants did not attend this hearing, which lasted approximately 23 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is the property manager for this rental building.

The landlord testified that the two tenants was each served separately with a copy of the landlord's application for dispute resolution hearing package on March 11, 2016, by way of registered mail. The landlord provided two Canada Post receipts and tracking numbers with his Application. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on March 16, 2016, five days after their registered mailings.

The landlord testified that the tenants were served with the landlord's first 10 Day Notices on February 6, 2016 and the second 10 Day Notice on February 7, 2016, by way of posting to their rental unit door. The landlord provided two signed, witnessed proof of service forms with his application. In accordance with sections 88 and 90 of the Act, I find that both tenants were deemed served with the landlord's first 10 Day Notice on February 9, 2016 and the second 10 Day Notice on February 10, 2016, three days after each of their postings.

Preliminary Issue – Dismissal of Tenants' Application

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding: The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenants' participation in this hearing, I order the tenants' application dismissed without leave to reapply.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application from the tenants?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified that this tenancy began on May 1, 2015 with another "tenant JF," pursuant to a written tenancy agreement. He said that the two tenants named in both

applications moved into the rental unit a few months after tenant JF. The landlord noted that tenant JF vacated the unit and the two tenants remained living there and paying rent to the landlord. The landlord said that the two tenants did not sign a new tenancy agreement with the landlord. The landlord stated that monthly rent in the amount of \$890.00 is payable on the first day of each month, as per the written tenancy agreement with tenant JF. The landlord said that a security deposit of \$445.00 was paid and the landlord continues to retain this deposit. The landlord explained that he attempted to increase the two tenants' rent by \$100.00 to a total of \$990.00 per month on a new tenancy agreement, but the tenants did not agree to it or sign one. The landlord did not provide a copy of the written tenancy agreement.

The landlord issued the first 10 Day Notice for an unpaid pet damage deposit of \$400.00 due on February 2, 2016. The notice indicates an effective move-out date of February 16, 2016. The landlord issued the second 10 Day Notice for unpaid rent of \$990.00 due on February 1, 2016. The notice indicates an effective move-out date of February 17, 2016.

The landlord seeks a monetary order of \$890.00 for each of February and March 2016 rent, totalling \$1,780.00. The landlord said that the tenants have not paid any payments towards rent. The landlord seeks to obtain a monetary order of \$400.00 for the pet damage deposit because the tenants never paid one. The landlord also seeks to recover the \$100.00 filing fee for this Application from the tenants.

Analysis

I find that the two tenants named in this application are tenants of this rental unit. I find that they were living in the rental unit with the first tenant, tenant JF, who signed the written tenancy agreement. I find that the two tenants then continued their tenancy by occupying the rental unit and paying rent to the landlord, which the landlord accepted.

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on February 1, 2016, within five days of being deemed to have received the second 10 Day Notice. The tenants made an application pursuant to section 46(4) of the *Act* on February 11, 2016, within five days of being deemed to have received the second 10 Day Notice. However, the tenants did not appear at this hearing to present submissions and I dismissed their application as noted above. I find that although the second 10 Day Notice indicated that rent of \$990.00 was due, the tenants were aware that their rent was at least \$890.00 because that is the amount that they have been paying to the landlord during this entire tenancy and they failed to pay any rent at all, including the \$890.00. In accordance with section

46(5) of the *Act*, the failure of the tenants to pay the full rent within five days led to the end of this tenancy on February 20, 2016, the corrected effective date on the second 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by February 20, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*, as the notice also complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

As per the landlord's evidence, the tenants continue to reside in the rental unit, causing loss to the landlord under section 7(1) of the *Act*. I find that the landlord proved that rent of \$890.00 is due for this tenancy, as this was the original amount in the tenancy agreement and the tenants did not sign a new tenancy agreement agreeing to a different amount of rent. The landlord provided undisputed evidence that the tenants failed to pay rent of \$890.00 for each of February and March 2016 and he was only seeking these amounts because that is the correct rent for this unit. The landlord said that the tenants offered a personal cheque to pay rent for March 2016, but it was rejected by the landlord because of previous NSF cheques and because it is the landlord's policy not to accept personal cheques. The landlord stated that no payment was then made by the tenants for March 2016 rent. Therefore, I find that the landlord is entitled to \$1,780.00 in rental arrears.

The landlord continues to hold the tenants' security deposit of \$445.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit of \$445.00 in partial satisfaction of the monetary award. No interest is payable over this period.

The landlord's application to obtain a pet damage deposit of \$400.00 is dismissed without leave to reapply. As this tenancy is ending, I find that the pet damage deposit is a moot issue. If the landlord encounters damage to the rental unit due to a pet, the landlord can file an application for dispute resolution to claim for this damage.

As the landlord was mainly successful in this Application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the Application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$1,435.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application to obtain a pet damage deposit of \$400.00 is dismissed without leave to reapply.

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 30, 2016

Residential Tenancy Branch

