



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened by 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 for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), and to recover the filing fee from the Tenants.

The Landlord appeared for the hearing and provided affirmed testimony. The Landlord also submitted a copy of the notice to end tenancy prior to the hearing. There was no appearance for the Tenants during the ten minute duration of the hearing. As a result, I turned my mind to the service of the documents by the Landlord.

The Landlord testified that he served each Tenant with a copy of the Application and the Notice of Hearing documents to the rental unit by registered mail on March 4, 2016, pursuant to Section 89(1) (c) of the Act. The Landlord provided the Canada Post tracking number for each Tenant into written evidence to verify this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find that the Tenants were deemed served with the required documents on March 9, 2016 pursuant to the Act. The hearing continued to hear the undisputed evidence of the Landlord.

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 rental arrears?

Background and Evidence

The Landlord testified that this tenancy started on March 1, 2015 on a month to month basis. Rent under the written tenancy agreement is payable by the Tenants in the amount of \$850.00 on the first day of each month. No security deposit was paid for this tenancy.

The Landlord testified that the Tenants failed to pay full rent for the month of December 2015 which left a balance of \$750.00. The Tenants then failed to pay rent for January and February 2016 which then resulted in rental arrears of \$2,450.00.

As a result, the Landlord personally served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on February 22, 2016. The Notice shows an expected date of vacancy of March 3, 2016 due to \$2,450.00 in unpaid rent due on February 1, 2016. The Tenants then failed to pay rent for March 2016 which increased the rental arrears to \$3,300.00.

The Landlord testified that the Tenants made two partial payments towards the rental arrears totaling \$600.00. As a result, the Landlord now seeks an Order of Possession to end the tenancy and a Monetary Order for unpaid rent in the amount of \$2,700.00 after adjusting the partial payments made by the Tenants.

Analysis

I have carefully considered the undisputed affirmed testimony and the written evidence of the Landlord 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 copy of the Notice provided into written evidence, I find the contents on the approved form comply with the requirements of Section 52 of the Act. I accept the Landlord's undisputed evidence that the Notice was served to the Tenants personally on February 22, 2016. Therefore, as explained and outlined in the Notice, the Tenants had until February 27, 2016 to pay the rent or make an Application to dispute the Notice, or were required to move out of the rental unit by March 3, 2016, being the vacancy date of the Notice.

However, there is no evidence before me that the Tenants have paid the outstanding rental arrears in full or made an Application to dispute the Notice. I accept the Landlord's evidence that the Tenants are still occupying the rental unit at the time of this hearing.

As a result, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the vacancy date of the Notice. As this date has now passed, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenants. This order must be served to the Tenants and may then be filed and enforced in the BC Supreme Court as an order of that court.

The Landlord is also entitled to recover the rental arrears in the amount of **\$2,700.00**. As the Landlord has been successful in this matter, the Landlord is awarded the **\$100.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the Landlord is granted a Monetary Order for a total amount of **\$2,800.00**. This order must be served on the Tenant and may then be enforced in the Provincial (Small Claims) Court as an order of that court. Original copies of both orders for service and enforcement are attached to the Landlord's copy of this decision.

Conclusion

The Tenants have breached the Act by failing to pay rent under this tenancy. As a result, the Landlord is granted an Order of Possession effective **two days after service on the Tenants**. The Landlord is also granted a Monetary Order for the remaining unpaid rent in the amount **\$2,800.00**, pursuant to Section 67 of the Act.

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 31, 2016

Residential Tenancy Branch