



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes:

OPR, MNR

Introduction

This participatory hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord had originally requested an Order of possession for unpaid rent and a monetary Order for unpaid rent via the Direct Request Proceeding Process. Direct Request is an ex parte hearing.

On February 12, 2016 an interim decision was issued convening the matter to this participatory hearing. The tenancy agreement supplied as evidence failed to set out a date rent was due each month.

The landlord received the interim decision and Notice of Reconvened Hearing on February 17, 2016. On February 17, 2016 the landlord went to the rental unit address and personally served each tenant with the hearing documents. Service occurred at approximately four or five p.m. The landlord had a witness with her. The tenants refused to accept the documents. The landlord told the tenants what was in the documents and left them at the door.

Therefore, I find that the tenants were given the hearing documents, personally, on February 17, 2016. The landlord told the tenants what she was serving, the tenants refused to accept the documents, which were then left for the tenants to pick up.

The landlord said that three days later the tenants vacated the rental unit.

Preliminary Matters

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 the filing fee cost paid by the landlord. The filing fee is not considered via the Direct Request Proceeding process, but is when a participatory hearing is held.

The application is amended to reflect a loss of rent revenue beyond the effective date of the Notice.

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?

Background and Evidence

The tenancy commenced on December 1, 2015, rent was \$1,600.00 due on the first day of each month. The \$800.00 security deposit was applied to December 2015 rent owed. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on January 19, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of January 28, 2016, was served to the tenants via registered mail, sent to the rental unit address. The Notice was issued on January 18, 2016. A copy of the registered mail receipt was supplied as evidence. The mail was accepted by the tenants on January 21, 2016; a copy of the Canada Post tracking information was supplied as evidence.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,600.00 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 tenants did not pay \$35.00 rent owed in December 2015; they did not pay January or February 2016 rent owed. The landlord has claimed \$3,235.00 in unpaid rent.

The landlord now has possession of the rental unit and does not require an order of possession.

Analysis

Section 90 of the Act stipulates that a document that is mailed is deemed to be received on the fifth day after mailing. Therefore, as the tenants received the registered mail on January 21, 2016 I find that the tenants received the Notice to end tenancy on that date.

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 received this Notice on January 21, 2016, I find that the earliest effective date of the Notice was January 31, 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 31, 2016.

In the absence of evidence to the contrary, I find that the tenants was served with a Notice ending tenancy that required the tenants to vacate the rental unit on January 31, 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 ended on the effective date of the Notice; January 31, 2016.

In the absence of evidence to the contrary, I find that the tenants have not paid rent from December 2015 to January 31, 2016 and per diem rent from February 1, 2016 to February 29, 2016 in the amount of \$3,235.00 and that the landlord is entitled to compensation in that amount.

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.

Based on these determinations I grant the landlord a monetary Order in the sum of \$3,335.00. 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 and monetary Order for unpaid rent.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: April 04, 2016

Residential Tenancy Branch