



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 23, 2016 by the Landlord. The Landlord filed seeking to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

Section 1 of the Act defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

The Landlord and her Agent appeared at the teleconference hearing and provided affirmed testimony. Based on submissions of the Landlord and Agent I find the Agent met the definition as a landlord, pursuant to section 1 of the Act, as the Agent has assisted the Landlord with filing this proceeding and with the service of evidence upon the Tenant. Therefore, for the remainder of this decision, terms or references to the Landlord importing the singular shall include the plural and vice versa, except where the context indicates otherwise

Section 90 of the Act provides that a document given or served in accordance with section 89 of the Act, if given or served by mail, is deemed to be received on the 5th day after it is mailed.

Section 71(2)(b) of the Act stipulates the director may order that a document has been sufficiently served for the purposes of this Act on a date the director specifies.

The Landlord provided affirmed testimony that the Tenant was served notice of this application and this hearing by registered mail on February 26, 2016. Canada Post tracking information was submitted into evidence.

Canada Post attempted to deliver the registered mail on February 29, 2016 and a notice card was left that day. Canada Post attempted delivery a second time on March 9, 2016 and a final attempt was made on March 14, 2016. As of March 26, 2016 the Canada Post tracking information confirms that the Tenant still did not pick up the registered mail and it was returned to the sender.

Based on the above information, I find that the Tenant was provided with 3 opportunities to receive the registered mail and they did not make an attempt to retrieve it. I find the aforementioned to be a deliberate effort on the part of the Tenant to avoid service. Therefore, I order the Tenant was sufficiently served with Notice of this hearing as of March 2, 2016, pursuant to Section 71(2)(b) of the *Act*.

The Agent provided affirmed testimony the Tenant was personally served with copies of the Landlord's evidence on March 28, 2016 at 6:00 p.m./

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Upon review of the application for Dispute Resolution; the 10 Day Notice to end tenancy; and the Notice of Hearing Document, I find there was a clerical error made by the Residential Tenancy Branch (RTB) staff when listing the rental unit number on the Notice of Hearing Document dated February 23, 2016.

The Landlord resides at the same street address in unit number 210 while the rental unit address is unit number 218. The Notice of Hearing Document states the hearing was concerning the premises at unit number 210, which is the Landlord's unit not the rental unit. On a balance of probabilities I find it reasonable to conclude the Tenant ought to have known she was being served evidence and the Notice of Hearing Document for a hearing regarding her rental unit address and not the Landlord's unit; especially after she had been served the 10 Day Notice.

After consideration of the above, I find the Tenant was sufficiently served notice of the Landlord's application and I proceeded to hear the undisputed evidence of the Landlord, in absence of the Tenant.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a verbal month to month tenancy that began on August 15, 2015. Rent of \$650.00 was initially due on or before the 15th of each month. No security deposit was paid.

The Landlord submitted she was afraid of the Tenant and a male occupant who moved into the rental unit after the Tenant was given possession. The Landlord stated the only document the Tenant signed was the Strata Form K document. She said she felt she had to have the male occupant's name so she had it written on the Form K a few days later.

The Landlord stated the Tenant was constantly late paying their rent and then the Tenant insisted rent be due on the 1st of each month instead of the 15th. The Landlord stated she simply accepted the change in due dates because she felt she could not disagree with the Tenant as she is afraid of her and her boyfriend.

The Agent testified the Landlord was a senior and was being taken advantage of by this Tenant and her boyfriend because they were not paying their rent, which is why he stepped in to help the Landlord. The Agent stated he assisted the Landlord in completing a 10 Day Notice for the unpaid rent in January 2016. Then the Landlord had a lawyer complete a 10 Day Notice on February 5, 2016 listing the unpaid January 2016 rent. A copy of the February 5, 2016 Notice was submitted into evidence along with a proof of service document which states the 10 Day Notice was posted to the Tenant's door on February 6, 2016 in the presence of a witness.

The Landlord asserted that shortly after she served the Tenant with the 10 Day Notice her unit had been broken into and her receipt book and all of her tenancy papers were stolen. She said shortly after that she asked the Tenant for the rent payment and the Tenant showed her a receipt which the Landlord said was not written by her and she questioned how the Tenant had gotten her receipts.

The Agent stated he has knowledge that rent had not been paid by the Tenant or her male friend for January or February 2016 which is why he assisted the Landlord in filing her application on February 23, 2016. The Agent also noted that in addition to the aforementioned unpaid rent, the Tenant did not pay the half of month's rent from October 16 to October 31, 2015 when they switched from paying on the 15th to the 1st of each month effective November 1, 2015.

Since filing the application the Tenant made one payment on March 1, 2016 in the amount of \$650.00. No rent payment has been received by the Landlord since March 1, 2016.

The Landlord seeks an Order of Possession for as soon as possible and a Monetary Order for the unpaid rent.

Analysis

After careful consideration of the foregoing, the undisputed evidence, and on a balance of probabilities I find as follows:

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Based on the above, I find that the terms of this verbal tenancy agreement between the Landlord and Tenant are recognized and enforceable under the *Residential Tenancy Act*.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

After consideration of the circumstances presented to me I find the Tenant ought to have known the Landlord was proceeding with an application for Dispute Resolution against the Tenant as the Tenant was personally served with copies of the Landlord's documentary evidence which clearly outlines the Landlord's submission.

Also, as stated above, Canada Post attempted to deliver the registered mail which included the application and Notice of Hearing Document on February 29, 2016 and a notice card was left that day. As such, I do not find it a mere coincidence that the Tenant paid the Landlord \$650.00 on March 1, 2016. Rather, I conclude the Tenant received the 10 Day Notice and then after receiving the Canada Post notice card on February 29, 2016 she realized the Landlord was taking steps to have them evicted. Then in attempts to further manipulate the process the Tenant paid rent on March 1, 2016.

I accept the undisputed submissions the Tenant was served a 10 Day Notice when it was posted to the Tenant's door on February 6, 2016. Given the circumstances before me I find the Tenant is deemed to have received that 10 Day Notice on February 9, 2016, three days after it was posted to the door, pursuant to section 90 of the *Act*.

The Tenant neither paid the rent in full nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **February 19, 2016**, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

Under section 26 of the *Act*, a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this *Act*. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the *Act*.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The Landlord claimed unpaid rent of \$1,625.00 which was comprised of \$325.00 for October 16 – 31, 2015; \$650.00 for January 2016 and \$650.00 for February 2016. She received a payment on March 1, 2016 of \$650.00 and based on Generally Accepted Accounting Principles the payment was applied to the oldest outstanding balance leaving a balance owing for January and February 2016 of \$975.00 (\$1,625.00 - \$650.00).

Based on the foregoing, I find the Landlord submitted sufficient evidence to prove the Tenant breached section 26 of the *Act* by failing to pay her rent in accordance with the tenancy agreement. Accordingly, I grant the Landlord a monetary award for unpaid rent of **\$975.00**, pursuant to section 67 of the *Act*.

As noted above this tenancy ended **February 19, 2016**, in accordance with the effective date of the 10 Day Notice. Therefore, I find the Landlord is seeking money for use and occupancy of the unit and not rent for March and April 2016. The Landlord will not regain possession of the unit until after service of the Order of Possession and will have to find a new tenant; therefore, I award the Landlord use and occupancy and any loss of rent for the entire months of March and April 2016, in the amount of **\$1,300.00** (2 x \$650.00). If the Landlord suffers additional loss they are at liberty to file another application for that loss.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

The Tenant is hereby ordered to pay the Landlord the monetary amount of **\$2,375.00** (\$975.00 + \$1,300.00 + \$100.00) forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$2,375.00** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlord was successful with her application and was granted an Order of Possession effective **Two (2) Days after service upon the Tenant** and a Monetary Order for **\$2,375.00**.

This decision is final, legally binding, 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 14, 2016

Residential Tenancy Branch