



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC

Introduction

This hearing was convened by way of 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 to keep the Tenant's security deposit and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act").

An agent for the Landlord and the Co-Landlord appeared for the hearing and provided affirmed testimony as well as a copy of the notice to end tenancy for unpaid rent. There was no appearance by the Tenant during the ten minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the documents by the Landlord for this hearing.

The Landlord's agent testified that the Tenant was served with a copy of the Landlord's Application and the Notice of Hearing documents by registered mail on February 29, 2016. The Landlord provided a copy of the Canada Post tracking number into oral evidence to verify this method of service. This number is noted on the front page of this decision.

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 before me, I find that the Tenant was deemed served with the required documents on March 5, 2016 pursuant to the Act. The hearing continued to hear the undisputed evidence of the participants.

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?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord's agent testified that this tenancy was an oral agreement which started on October 1, 2014 on a month to month basis. Rent is payable by the Tenant in the amount of \$300.00 on the first day of each month. The Tenant paid the Landlord a security deposit of \$100.00 at the start of the tenancy which the Landlord still retains.

The Landlord testified that the Tenant failed to pay rent for January and February 2016. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on February 15, 2016. The Notice was provided into written evidence and is dated February 13, 2016 with a vacancy date of March 1, 2016 due to \$600.00 in unpaid rent due on February 1, 2016.

The Landlord testified that the Tenant has not disputed the Notice and still continues to occupy the rental unit. In addition, the Tenant has also failed to pay rent for March and April 2016. As a result, the Landlord now seeks to recover unpaid rent in the amount of \$1,200.00 as well as an Order of Possession to end the tenancy.

Analysis

The 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. Therefore, based on the oral testimony above, I find the Landlord and Tenant engaged into a month to month tenancy which started in October 2014 as detailed above.

Section 26(1) of the Act requires a tenant to pay rent 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 Notice, I find that the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed evidence that the Notice was served to the Tenant by registered mail on February 15, 2016. Therefore, pursuant to Section 90(a) of the Act, the Tenant was deemed to have received the Notice on February 20, 2016 and

had until February 25, 2016 to pay the outstanding rent or make an Application to dispute the Notice. There is no evidence before me that the Tenant did either. I accept the Landlord's agent's testimony that the Tenant has failed to vacate the rental unit by the vacancy date detailed on the Notice.

As a result, I find that the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the Notice. As this date has now passed and the Tenant is still residing in the rental unit without paying rent, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and may be enforced in the BC Supreme Court.

I find the Landlord is also entitled to unpaid rent in the amount of \$1,200.00 claimed. Section 72 of the Act allows me to award a party the filing fee paid for an Application. Since the Landlord has been successful in this Application, I grant the \$100.00 filing fee for the cost of having to make this Application. Therefore, the total amount awarded to the Landlord is \$1,300.00. As the Landlord already holds the Tenant's \$100.00 security deposit, the Landlord may retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. The Landlord is granted a Monetary Order for the remaining balance of \$1,200.00. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

Conclusion

The Tenant has failed to pay rent under this oral tenancy. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenant. The Landlord is allowed to keep the Tenant's security deposit and is granted a Monetary Order for \$1,200.00. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 14, 2016

Residential Tenancy Branch