



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

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 and money owed or compensation for damage or loss, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenants did not attend this hearing, which lasted approximately 24 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 testified that on March 23, 2016 he forwarded the landlord's application for dispute resolution hearing package ("Application") via registered mail to the tenants. The landlord provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the application and supporting documents on March 28, 2016, the fifth day after their registered mailing.

The landlord testified that he served the tenants with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 28, 2016 ("10 Day Notice"), on the same date, by way of posting to the rental unit door where the tenants were residing. The landlord provided a signed, witnessed proof of service. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on January 31, 2016, three days after its posting.

Preliminary Issue – Amendment of Landlords' Application

The landlord confirmed that he wished to amend the landlords' Application to increase his monetary claim to include April 2016 unpaid rent of \$1,200.00. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if he did not pay the rent or vacate the rental unit to permit the landlord to re-rent the unit. Based on this undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlords' Application to include a monetary claim for April 2016 unpaid rent of \$1,200.00.

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 recover the filing fee for this Application from the tenant?

Background and Evidence

The landlord testified that this tenancy began on June 1, 2014 on a fixed term until May 31, 2015 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,200.00 was payable on the first of each month. The tenants remitted a \$600.00 cheque for the security deposit at the start of the tenancy which was later returned as insufficient funds. The tenants continue to reside in the rental unit.

A 10 Day Notice for unpaid rent of \$2,200.00 due on December 1, 2015 was issued to the tenants on January 28, 2016. The notice indicates an effective move-out-date of February 15, 2016.

The landlord seeks a monetary order of \$5,800.00 for unpaid rent from December 2015 to April 2016. The landlord stated November 2015 rent was not paid by the due date, but rather in two separate payments of \$600.00. The first payment was made in December 2015 and the second in January 2016. The landlord confirmed the November 2015 rent was paid in full. The landlord claimed that the tenants paid a total of \$200.00 in rent for the above five months.

The landlord testified the tenants are responsible for utilities and is seeking a total of \$300.00 in outstanding utilities from 2016. The landlord testified that he did not give a written demand of the utility charges to the tenants. The landlord has not submitted copies of the tenancy agreement or utility bills.

The landlord is also seeking to recover the \$100.00 filing fee for this Application from the tenant.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on December 1, 2016 and did not pay the rent within five days of receiving the 10 Day Notice.

The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to pay the full rent or file an application within five days led to the end of this tenancy on February 10, 2016, the corrected date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by February 10, 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*. I find that the landlord's 10 Day Notice 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 a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*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 a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the landlord proved that the current rent for this unit is \$1,200.00. I find the landlord provided undisputed evidence that the tenants failed to pay full rent between December 2015 and April 2016. Therefore, I find that the landlord is entitled to \$5,800.00 in rental arrears.

Section 46 of the *Act* establishes that utilities may be treated as rent if the tenancy agreement requires the tenant to pay utility charges and the utility charges are unpaid more than 30 days after the tenant is given written demand for payment. Due to the

lack of written demand to the tenant, as acknowledged by the landlord and the absence of utility bills, I find the landlord is not entitled to recover utility costs from the tenant.

As the landlord was partially 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 (2) days after service on the tenant**. Should the tenants 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 \$5,900.00 against the tenants. The tenant must be served with this Order as soon as possible. Should the tenants 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.

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: April 18, 2016

Residential Tenancy Branch