



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenants’ security deposit and to recover the filing fee.

Two agents for the Landlord, one of the Tenants, and the Tenant’s father appeared for the hearing. The parties provided affirmed testimony during the hearing. Only the Landlord provided documentary evidence prior to the hearing. The Tenant confirmed receipt of the Landlord’s Application and Notice of Hearing documents by personal service pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the “Act”).

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenants’ security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The parties agreed that this tenancy started on March 1, 2014. A written tenancy agreement was completed and rent is payable by the Tenants in the amount of

\$1,100.00 on the first day of each month. The Tenants paid the Landlord a security deposit of \$550.00 on February 27, 2014 which the Landlord still retains.

The Landlord's agents both testified that the Tenants failed to pay the full rent for April 2016, leaving an outstanding balance of \$250.00. The Tenants then failed to pay full rent for May 2016 leaving an outstanding balance of \$550.00. As a result, the Landlord served the Tenants personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on May 2, 2016. This was served in the presence of a witness who signed a Proof of Service document to verify this method of service. The Notice was provided into evidence and details a vacancy date of May 12, 2016 due to \$800.00 in unpaid rent due on May 1, 2016.

The Tenant confirmed receipt of the Notice on May 2, 2016. The Tenant explained that she had been served multiple documents and notices during the three years of this tenancy and this made everything confusing and unclear to her. The Tenant was asked to confirm that she had received the Notice dated May 2, 2016 pertaining to the unpaid rent for April and May 2016. The Tenant confirmed the details on the Notice as they appeared before me.

The Tenant was asked what notices had been served to her during this tenancy. The Tenant testified that this included breach letters, notices to end tenancy for cause and notices to end tenancy for unpaid rent. The Tenant testified that they did not dispute this Notice because the Landlord had always failed to follow up and take action against them during the tenancy when previous notices were served to them.

The Tenant explained that she had a roommate who was helping her to pay rent but the roommate had left and she was struggling to make the rental payment. When the Tenant was asked why she did not pay the full rent for April and May 2016, she explained that she had offered rent to the Landlord, but the Landlord refused to accept it because the property had been sold. The Tenant explained that they had heard from the upstairs renters that the property had been sold but they had not been informed of anything by the Landlord.

The Landlord's agents disputed the Tenant's testimony stating that the Tenants had made no efforts to pay rent. The Landlord's agents testified that the Landlord had refused to cash the June 2016 rent cheque they received for partial rent from a third party government agency because she did not want to re-instate the tenancy and for fear that it would be returned as having insufficient funds or cancelled by the Tenants.

Analysis

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 the 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 of the Notice.

I have examined the Notice and I find that the form and contents of the Notice comply with Section 52 of the Act. I am satisfied that the Notice was served to the Tenants personally on May 2, 2016 based on the witness evidence and the Tenant's confirmation that the Notice subject to this hearing was received.

There is no evidence before me that the Tenants made an Application to dispute the Notice. Although the Tenant claimed that she had attempted to pay rent to the Landlord after being served with the Notice, this was disputed by the Landlord. Therefore, I find the Tenant's oral testimony in this respect is not sufficient for me to find that rent was paid by the Tenants after receiving the Notice.

The Act provides remedies for a landlord to deal with various issues during a tenancy, such as unpaid rent or breaches of an agreement. The Act does not limit the landlord in the number of notices that may be served to the Tenant. In addition, this also does not mean that a Tenant may ignore a notice to end tenancy on the basis that they have been served an excessive amount of documents during the tenancy for which the Tenant relied only on her oral testimony to prove. A tenant served with a notice to end tenancy must respond to that notice pursuant to the Act and pursuant to the instructions detailed on it.

Therefore, I am only able to conclude based on the evidence before me that pursuant to the Act and the Notice, the Tenants failed to dispute the Notice or pay the outstanding amount of rent within the five days that were provided to them after service of the Notice to them. As a result, they are conclusively presumed to have accepted the tenancy ended pursuant to the vacancy date on the Notice.

As this date has now passed, the Landlord is entitled to an Order of Possession effective two days after service on the Tenants. This order may then be filed and enforced in the BC Supreme Court as an order of that court if the Tenants fail to vacate the rental unit.

As there is insufficient evidence before me that the Tenants paid rent for April and May 2016, the Landlord is also awarded these rental arrears in the amount of **\$800.00**. As

the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$100.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable to the Landlord is **\$900.00**.

As the Landlord already holds the Tenants' \$550.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is granted a Monetary Order for the remaining balance of **\$350.00**. This order must be served on the Tenants and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court. Copies of the above orders for service and enforcement are attached to the Landlord's copy of this decision.

Conclusion

The Tenants have failed to pay rent. As a result, the Landlord is granted a two day Order of Possession. The Landlord is allowed to keep the Tenants' security deposit and is granted a Monetary Order for the remaining balance of \$350.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 10, 2016

Residential Tenancy Branch