



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, OPC, MNR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords for: an Order of Possession for unpaid rent and utilities and for cause; a Monetary Order for unpaid rent and utilities; and, to recover the filing fee from the Tenants.

Preliminary Issues

The Landlords appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Tenants during the 30 minute hearing and no submission of any evidence from them. Therefore, I turned my mind to the service of documents by the Landlords for this hearing. The male Landlord testified that the Application, the Notice of Hearing documents, and their written evidence was served to each Tenant by registered mail to the rental unit address on May 13, 2016. The Landlords provided a copy of the Canada Post tracking receipts and numbers into evidence to verify this method of service. The Landlords also testified that they had seen a number of Canada Post notice cards posted to the rental unit door.

Section 90(a) of the *Residential Tenancy Act* (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 of the Landlords, I find the Tenants were deemed served with the required documents on May 18, 2016 pursuant to Section 90(a) and Section 89(1) (c) of the Act.

During the hearing, the Landlords requested to retain the Tenants’ security deposit as part of their monetary claim as they did not know they could claim for this. As the Tenants’ security deposit can be awarded by me under Section 72 of the Act, I amended the Landlord’s Application in order to deal with this request, pursuant to my authority under Section 64(3) (c) of the Act. Under the same authority and pursuant to

Rule 4.1 of the Residential Tenancy Branch Rules of Procedure, I also allowed the Landlords to include as part of their monetary claim unpaid rent for June 2016 as the Tenants would have been aware that this was unpaid.

The Landlords also withdrew their monetary claim for costs associated with the Tenants having an unreasonable amount of occupants in the rental unit. This was because the amount being claimed had not been defined in the Application or on the tenancy agreement.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a Monetary Order for unpaid rent for May and June 2016?
- Are the Landlords entitled to keep the Tenants' security deposit in partial satisfaction of the Landlords' monetary claim for unpaid rent?

Background and Evidence

The Landlords testified that this tenancy started on March 15, 2016 on a month to month basis. A written tenancy agreement was completed which established that rent is payable by the Tenants in the amount of \$1,200.00 on the first day of each month. The Tenants paid a security deposit of \$600.00 on March 8, 2016 which the Landlords still retain.

The Landlords testified that the Tenant failed to pay rent on May 1, 2016 in the amount of \$1,200.00. As a result, the Landlords served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") by posting it to the Tenants' door on May 2, 2016. The Notice was provided into evidence and has a vacancy date of May 12, 2016. The female Landlord testified that she witnessed the male Landlord serving the 10 Day Notice on the door of the rental unit.

The Landlords testified that the Tenants were also served a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on April 30, 2016. The 1 Month Notice was provided into evidence and states a vacancy date of May 31, 2016. This was also served to the Tenants' door which was verified by the female Landlord's testimony. The Landlords now request to end the tenancy and for the Tenants to pay the rental arrears which includes unpaid rent for June 2016.

Analysis

I first turn my mind to the 10 Day Notice. Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement. Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a 10 Day 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 must vacate the rental unit on the vacancy date of the Notice.

Having examined the copy of the 10 Day Notice provided into written evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlords' undisputed evidence that the 10 Day Notice was served to the Tenants by attaching it to the rental unit door on May 2, 2016 in accordance with Section 88(g) of the Act.

There is no evidence before me that the Tenants paid the outstanding rent on the 10 Day Notice or made an Application to dispute it within the five day time limit. Therefore, I am only able to conclude that the Tenants are conclusively presumed to have accepted the tenancy ended on the effective vacancy date of the 10 Day Notice.

As the effective vacancy date on the Notice has now passed and the Tenants still occupy the rental unit without paying rent, the Landlords are entitled to an Order of Possession which is effective two days after service on the Tenants. This order must be served on the Tenants and can then be enforced in the Supreme Court of British Columbia as an order of that court if the Tenants fail to vacate the rental unit.

As the tenancy has been ended through the 10 Day Notice, I did not examine or make findings on the 1 Month Notice as this is now a moot issue.

In relation to the Landlords' monetary claim for unpaid rent, I accept the Landlords' undisputed evidence that the Tenants have failed to pay rent for the months of May and June 2016. Therefore the Landlords are awarded this amount.

As the Landlords have been successful their Application, they are also entitled to recover from the Tenants the \$100.00 filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlords is \$2,500.00 (\$1,200.00 + \$1,200.00 + \$100.00). As the Landlords already hold the Tenants' \$600.00 security deposit, I order the Landlords to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act.

The Landlords are issued with a Monetary Order for the outstanding balance of \$1,900.00 (\$2,500.00 - \$600.00). This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court as an order of that court if the Tenants fail to make payment.

Copies of the above orders are attached to the Landlords' copy of this Decision. The Tenants should note that the Landlords are able to recover costs associated with the enforcement of the above granted orders.

Conclusion

The Tenants have breached the Act by not paying rent. The Landlords are granted a two day Order of Possession. The Landlords may keep the Tenants' security deposit and are issued with a Monetary Order for the outstanding balance of rent and the filing fee in the amount of \$1,900.00.

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 13, 2016

Residential Tenancy Branch