



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 659804 BC. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MND, MNR, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein they sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on April 26 2016 (the "Notice"), a Monetary Order in the amount of \$2,750.00 for damage to the rental unit and unpaid rent as well as to recover the filing fee.

Only the Landlord's agent, L.L., appeared at the hearing; she identified herself as the manager of the rental building. L.L. gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

L.L. testified that she served the Tenants in person with the Notice of Hearing and the Landlord's Application on June 15, 2016. L.L. confirmed that her sister, B.T., witnessed service of the Tenants. I accept L.L.'s testimony and find that the Tenants were served with notice of the hearing and therefore I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

L.L. testified as to the terms of the tenancy. She stated that the tenancy began approximately a year ago and that monthly rent was payable in the amount of \$875.00 payable on the first of the month.

L.L. stated that the Tenants failed to pay rent for the month of April 2016. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on April 26, 2016 indicating the amount of \$875.00 was due as of April 1, 2016 (the "Notice").

Based on the testimony of L.L., as well as the filed "Proof of Service—10 Day Notice to End Tenancy for Unpaid Rent or Utilities", I find that the Tenant, C.L., was served with the Notice on April 26, 2016. Notably C.L. signed the Proof of Service confirming receipt of the Notice. Accordingly, and pursuant to section 88 of the *Residential Tenancy Act*, I find that the Tenants were served with the Notice as of April 26, 2016.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, May 1, 2016. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. As May 1, 2016 is a Sunday, the Tenants had until May 2, 2016 to file their application for dispute resolution.

L.L. testified that the Tenants failed to apply to dispute the Notice and failed to pay the outstanding rent. She further testified that the Tenants failed pay rent for May, June or July 2016 such that the sum of \$3,500.00 remains outstanding for rent.

L.L. confirmed at the hearing that she wished to pursue further compensation with respect to the condition of the rental unit and any damage one the tenancy came to an end.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the Act, the Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenants have some authority

under the Act to not pay rent. In this situation, and based on the evidence before me, I find that the Tenants had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlord has established a total monetary claim of \$3,600.00 comprised of outstanding rent in the amount of \$3,500.00 and the \$100.00 fee paid by the Landlord for this application. I grant the Landlord a Monetary Order under section 67 for the balance due in the amount of \$3,600.00. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court. I grant the Landlord leave to reapply for further monetary relief, including the damages claim contained in the application before me.

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession and is granted a Monetary Order for the \$3,500.00 in rent due as well as the \$100.00 filing fee. The Landlord is granted leave to reapply for further monetary compensation, including the damages claim contained in the within application.

This decision is final and binding on the parties, except as otherwise provided under the Act, 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: July 14, 2016

Residential Tenancy Branch