



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, MND, MNR, MNSD, MNDC, 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 on June 21, 2016. The Landlord applied for an Order of Possession for cause. The Landlord also applied for a Monetary Order for: unpaid rent; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”); for damage to the rental unit; to keep the Tenant’s security deposit; and to recover the filing fee from the Tenant.

An agent for the company Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, there was no appearance for the Tenant for the 18 minute duration of the hearing. Therefore, I turned my mind to the service of the Landlord’s Application to the Tenant.

The Landlord’s agent testified that he served the Tenant with a copy of the Application and the Notice of Hearing documents to the rental unit address. This was done by registered mail on June 21, 2016. The Landlord’s agent provided the Canada Post tracking number into oral evidence to verify this method of service. This number is documented 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 of the Landlord’s agent, I find the Tenant was deemed served with the required documents on June 26, 2016 pursuant to the Act.

The Landlord explained at the start of the hearing that the Tenant was still in the rental unit and that he was only seeking a Monetary Order for unpaid rent as the damages were still undetermined at the time of this hearing. As a result, the Landlord withdrew the remainder of his monetary claim and I gave him leave to re-apply.

Issue(s) to be Decided

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

Background and Evidence

The Landlord's agent testified that this tenancy started on February 1, 2016 on a month to month basis. A written tenancy agreement was completed which provides that rent is \$812.00 per month and the Tenant's contribution is \$424.00 which is payable on the first day of each month. The Tenant paid a \$406.00 security deposit at the start of the tenancy which the Landlord still retains.

The Landlord's agent testified that the Tenant was repeatedly late paying rent in this tenancy despite being given a number of breach letters. As a result, the Landlord's agent served the Tenant with a 1 Month Notice to End Tenancy (the "Notice") dated February 19, 2016. The Notice was posted to the Tenant's door on the same day and provided into evidence for this hearing. The vacancy date on the Notice is March 31, 2016 and the reasons for ending the tenancy are because: the Tenant is repeatedly late paying rent; and, has breached a material term of the tenancy agreement that was not corrected after written notice to do so was given. The Landlord's agent testified that the Tenant has not disputed the Notice and since being served the Notice has failed to pay rent for the months of March, April, May, June and July 2016. Therefore, the Landlord now seeks to end the tenancy and recover unpaid rent in the amount of \$2,120.00

Analysis

I find that the contents and format of the Notice complied with Section 52 of the Act. I also accept that the Notice was served to the Tenant on February 19, 2016 by posting it to the Tenant's rental unit door. Section 90(c) of the Act provides that a document served by attaching it to the door is deemed to have been received three days later. Therefore, I find that the Tenant is deemed to have received the Notice on February 22, 2016 pursuant to the Act.

Section 47(5) of the Act explains that if a tenant fails to make an Application to dispute the Notice, then they are conclusively presumed to have accepted that the tenancy ends on the vacancy date of the Notice. There is no evidence before me that the Tenant

applied to dispute the Notice. Therefore, I find the Tenant is conclusively presumed to have accepted the Notice and must move out of the rental unit.

As the Tenant has failed to pay any rent since being issued with the Notice, and the vacancy date of the Notice has now passed, the Landlord is entitled to an Order of Possession effective two days after service on the Tenant. This order must be served on the Tenant and may then be filed and enforced in the BC Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

In relation to the Landlord's monetary claim, I accept the undisputed evidence of the Landlord's agent that the Tenant is in rental arrears in the amount of \$2,120.00. As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant 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 Tenant to the Landlord is \$2,220.00.

As the Landlord already holds \$406.00 of the Tenant's 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 issued with a Monetary Order for the remaining balance of \$1,814.00. This order must be served on the Tenant 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 are attached to the Landlord's copy of this decision.

Conclusion

The Landlord is granted an Order of Possession to end the tenancy. The Landlord may keep the Tenant's \$406.00 security deposit and is issued a Monetary Order for the remaining balance of \$1,814.00 for unpaid rent and recovery of the filing fee. The Landlord's remaining monetary claim was withdrawn with leave to re-apply. 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: July 29, 2016

Residential Tenancy Branch