



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 a Landlords' Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlords also applied to keep the Tenants' security deposit, and to recover the filing fee from the Tenants.

Both Landlords appeared for the hearing and provided affirmed testimony as well as a copy of the notice to end tenancy. There was no appearance by the Tenants during the 21 minute duration of the hearing or any submission of evidence. Therefore, I turned my mind to the service of the documents by the Landlords for this hearing.

The Landlords testified that the female Tenant named on the Landlords' Application had left the rental unit in March 2016 and the remaining male Tenant was continuing to reside there without paying rent. The male Landlord testified that he had served a copy of the Application and the Notice of Hearing documents to the rental unit address for the male Tenant on June 14, 2016 by registered mail. The male Landlord provided the Canada Post tracking number into oral evidence to verify this method of service. This number is detailed on the front page of this decision. The female Landlord testified that the documents were returned back to them and that they were partially opened.

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 male Tenant was deemed served with the required documents on June 19, 2016 pursuant to the Act. As there is only sufficient evidence before me that the male Tenant was served with notice of this hearing because the female Tenant had vacated the rental unit, I removed the female Tenant's name from the style of cause on the front page of this decision and from any subsequent orders issued to the Landlords.

During the hearing, the Landlords explained that the male Tenant had also not paid rent for July 2016, which was the interim period after the point the Application was made. The Landlords requested to add this to their monetary claim for unpaid rent. As the male Tenant would have been aware of the outstanding unpaid rent amounts, I allowed the Landlords to amend the Application for the increased amount to be considered in this hearing. I did this pursuant to my authority under Section 64(3) (c) of the Act and Rule 4.2 of the Residential Tenancy Branch Rules of Procedure. The hearing continued to hear the undisputed evidence of the Landlords.

Issue(s) to be Decided

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

Background and Evidence

The Landlords both testified that this tenancy started two years ago. Although no written tenancy agreement was entered into, the Landlords testified that this was an oral agreement whereby the Tenants were required to pay rent of \$550.00 on the first day of each month. The Tenants paid the Landlords a security deposit of \$275.00 which the Landlords still retain.

The Landlords testified that the female Tenant left the rental unit in March 2016 after which the remaining male Tenant failed to pay rent. As a result, the Landlords served the male Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on May 3, 2016. This was served personally to the male Tenant's mother who is apparently residing with the male Tenant. The Landlords provided a Proof of Service document which was signed by a witness to verify this method of service. The Notice was provided into evidence and shows an expected date of vacancy of May 13, 2016 due to \$1,650.00 in unpaid rent due on May 1, 2016.

The Landlords testified that the male Tenant has not disputed the Notice and has not paid any rent since being served the Notice. As a result, the Landlords now seek to recover unpaid rent in the amount of \$2,200.00 as well as an Order of Possession to end the tenancy.

Analysis

The Act defines a “tenancy agreement” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Furthermore, Section 17 of the Act states that landlord may require a tenant to pay a security deposit as a condition of entering into a tenancy agreement. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the Act as the parties entered into an oral tenancy agreement.

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 a 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 to which the Notice relates.

Having examined the Notice, I find that the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlords’ undisputed oral testimony and written evidence that the Notice was served to the male Tenant on May 3, 2016 pursuant to Section 88(e) of the Act. Therefore, the male Tenant had until May 8, 2016 to pay rent or make an Application to dispute the Notice. There is no evidence before me that the male Tenant did either.

As a result, I find the male Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the Notice. As this date has now passed and the male Tenant is still residing in the rental unit without paying rent, the Landlords are entitled to an Order of Possession which is effective two days after service on the male Tenant. This order must be served on the male Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court.

I find the Landlords are also entitled to unpaid rent in the amount of \$2,200.00 claimed. As the Landlords have been successful in this matter, the Landlords are also entitled to recover the \$100.00 Application filing fee pursuant to Section 72(1) of the Act.

Therefore, the total amount payable by the male Tenant to the Landlords is \$2,300.00.

As the Landlords already hold the Tenants' \$275.00 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.

As a result, the Landlords are granted a Monetary Order for the remaining balance of \$2,025.00. This order must be served on the male 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 for service and enforcement are attached to the Landlords' copy of this decision.

Conclusion

The male Tenant has failed to pay rent. As a result, the Landlords are granted an Order of Possession effective two days after service on the male Tenant. The Landlords are allowed to keep the Tenants' security deposit and are granted a Monetary Order for the remaining balance of \$2,025.00.

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: July 20, 2016

Residential Tenancy Branch