



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

The Landlord and an agent for the Landlord appeared for the hearing and provided affirmed testimony as well as a copy of the notice to end tenancy prior to the hearing. There was no appearance by the Tenants during the 13 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the documents by the Landlord for this hearing.

The Landlord's agent explained that the Landlord had served the Tenants with a copy of the Application and the Notice of Hearing documents by courier because at the time it was served, July 8, 2016, the Landlord was advised of a pending Canada Post strike. The Landlord provided a copy of the courier tracking number which shows that an attempt was made to serve the Tenants at the rental unit address but this was returned to the Landlord several days later. The Landlord testified that the courier documents show that the package was held at their location until July 11, 2016 for the Tenants to pick up which they failed to do.

In making findings on the service of documents by the Landlord to the Tenants, I note that the Director of the Residential Tenancy Branch made a plenary order on June 29, 2016 allowing for service of special documents (such as a notice of a hearing) due to a looming Canada Post Strike. This was done because the Act only allows for service by Canada Post. This plenary order was published to the Residential Tenancy Branch website. The plenary order allows for service by courier and for this to be deemed received five days after the courier is initiated until the Canada Post strike is resolved.

Based on the foregoing, I am satisfied by the Landlord's undisputed oral and written evidence that the Tenants were served with notice of this hearing by courier and that the courier left a notice card which explained that the documents were available for pick

up until July 11, 2016. A party cannot avoid service by failing or neglecting to pick up mail. Therefore, I find the Tenants were served notice of this hearing on July 16, 2015 pursuant to the Section 90 deeming provisions of the Act.

During the hearing, the Landlord explained that the Tenants had also not paid rent and utilities for August 2016, which was the interim period after the point the Application was made. The Landlords requested to add these unpaid amounts to their monetary claim. As the Tenants would have been aware of these outstanding rental and utility arrears, I allowed the Landlord 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 Landlord.

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 and utilities?
- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of the monetary claim for unpaid rent and utilities?

Background and Evidence

The Landlord testified that this tenancy started on March 1, 2016 for a fixed term of one year. A written tenancy agreement was signed and rent was payable in the amount of \$1,400.00 by the Tenants on the first day of each month. The tenancy agreement also required the Tenants to pay 40% of the utility costs. The Tenants paid the Landlord a security deposit of \$700.00 which the Landlord still retains.

The Landlord testified that the Tenants failed to pay rent for June 2016 and utilities in the amount of \$1,400.00 and \$73.70 respectively. As a result, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on June 17, 2016. The Landlord testified that this was posted to the Tenants' door with a witness. Both pages of the two page Notice were provided into evidence and shows an expected date of vacancy of June 17, 2016 due to \$1,400.00.00 in unpaid rent and \$73.70 in unpaid utilities. The Notice was not dated by the Landlord and the Landlord stated that he forgot to do this. The Notice is also an older 2006 version.

The Landlord testified that the Tenants then failed to pay rent and utilities for July and August 2016. The utilities for July 2016 were \$10.03, and \$103.61 for August 2016. As a result, the Landlord now seeks to recover a total of \$4,387.34 in unpaid rent and

utilities from the Tenants and an order to end the tenancy because the Notice has not been disputed and the arrears have not been paid.

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 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 the Landlord served the Tenants with the older previous version (dated 2006) of the current Notice a landlord is required to use. In this respect, I turn to Policy Guideline 18 on the Use of Forms. This guideline stipulates that a form not approved by the Director is not invalid if the form used still contains the required information and is not constructed with the intention of misleading anyone. Therefore, I find that the version of the Notice used by the Landlord in this case was a 2 page Notice which provided clear instructions to the Tenants of their rights and obligations that are reflected by the Act. Therefore, I find the Notice was valid and was sufficiently served to the Tenants pursuant to Section 88(g) of the Act.

The Act also requires a landlord to date a notice to end tenancy. In this case, the Landlord did not date the Notice. However, Section 68(1) of the Act allows an arbitrator to amend a Notice if the person receiving it knew or should have known the information that was omitted from the Notice and that it is reasonable to amend it. I find that the failure of the Landlord to date the Notice for June 17, 2016 posed no disadvantage to the Tenants who were served with it and that this omission does not invalidate the Notice. Therefore, I amend the Notice to include the June 17, 2016 date. I also correct the vacancy date on the Notice to June 30, 2016 pursuant to Section 53 of the Act which allows for incorrect dates to self-correct. This period also takes into account the three days that the Tenants are deemed to have received the Notice after it was posted to the Tenants' door.

I find there is no evidence before me that the Tenants have disputed the Notice within the five days they are deemed to have received it or made payment of the rental and utility arrears detailed on the Notice. I also accept the undisputed evidence that the Tenants have also failed to pay rent and utilities for the months after they were served the Notice.

As a result, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the corrected vacancy date of the Notice. As this date has now passed and the Tenants are still residing in the rental unit without paying rent, the Landlord is 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 may then be filed and enforced in the Supreme Court of British Columbia as an order of that court.

I find the Landlord is also entitled to unpaid rent and utilities in the amount of \$4,387.00 claimed. As the Landlord has been successful in this matter, the Landlord is 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 Tenants to the Landlord is \$4,487.34. As the Landlord already holds the Tenants' \$700.00 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 \$3,787.34. This order must be served on the Tenants and may then be enforced in the Small Claims Division of the Provincial Court. Copies of the above orders for service and enforcement are attached to the Landlord's copy of this decision.

Conclusion

The Tenants has failed to pay rent and utilities. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenants. The Landlord is allowed to keep the Tenants' security deposit and is granted a Monetary Order for the remaining balance of \$3,787.34. 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: August 17, 2016

Residential Tenancy Branch