



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, FF (Landlords' Application)
CNR (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on July 12, 2016 and by the Landlords on August 3, 2016.

The Landlords applied for an Order of Possession and a Monetary Order for unpaid rent, to keep the Tenant's security deposit, and, to recover the filing fee from the Tenant. The Tenant applied to cancel the notice to end tenancy for unpaid rent.

The female Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Tenant despite the fact that the Tenant's Application was scheduled to be heard at the same time as the Landlords' Application in this hearing. As there was no appearance for the Tenant during the 13 minute duration of the hearing, I dismissed the Tenant's Application without leave to re-apply.

I then turned my mind to the service of the Landlords' Application to the Tenant. The Landlord testified that she had served a copy of their Application and the Notice of Hearing documents to the Tenant by registered mail on August 4, 2016 and by placing a copy in the Tenant's mail box. In the absence of any evidence before me to dispute this, I accept that the Tenant was served with the documents for this hearing pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). Section 90(c) of the Act states that a party served a document by mail is deemed to have received it five days later. Therefore, I find the Tenant is deemed served the documents for this hearing on August 9, 2016.

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?
- Are the Landlords entitled to keep the Tenant's security and pet damage deposit in partial satisfaction of their monetary claim?

Background and Evidence

The Landlord testified that this tenancy started on December 1, 2014 for a fixed term of one year after which the tenancy continued on a month to month basis. A residential tenancy agreement was signed which required the Tenant to pay rent of \$1,050.00 on the first day of each month. The Tenant paid a security deposit of \$525.00 on November 21, 2014 and made a partial payment towards the pet damage deposit in the amount of \$320.00 at the start of the tenancy. The Landlord still retains these deposits.

The Landlord testified that the Tenant went into rental arrears for June 2016 in the amount of \$300.00. The Tenant then failed to pay full rent for July 2016. As a result, the Landlords served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by posting it to the Tenant's door on July 6, 2016. The Notice was provided into evidence and shows a vacancy date of July 16, 2016 due to \$1,350.00 in unpaid rent.

The Landlord testified that the Tenant then also failed to pay rent for August 2016 bringing the rental arrears to a total of \$2,400.00 which the Landlords now seeks to recover. The Landlord testified that the Tenant is still occupying the rental unit and has not paid any of the rental arrears. Therefore, the Landlords also seek to end the tenancy for unpaid rent.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act, unless the tenant has right under the Act to withhold it or deduct from it. 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 must vacate the rental unit on the vacancy date of the Notice.

Having examined the copy of the 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 Landlord's undisputed evidence that the Notice was served to the Tenant by attaching it to the rental unit door on July 6, 2016 in accordance with Section 88(g) of the Act.

The Tenant states on her Application that she received the Notice on July 10, 2016. The Tenant made her Application to dispute the Notice on July 12, 2016. While the Tenant did make an Application to dispute the Notice within the required time limit prescribed by the Act, the Tenant did not appear for the hearing to explain why she was disputing the Notice. There is no evidence before me that the Tenant has paid the outstanding rent or had authority under the Act to not pay rent.

Therefore, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the Notice. As the vacancy date on the Notice has now passed and the Tenant is still occupying the rental unit without paying rent, the Landlords are entitled to an Order of Possession which is effective two days after service on the Tenant. This order must be

served on the Tenant and can then be enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

The Landlords are also awarded unpaid rent in the amount of **\$2,400.00**. As the Landlords have been successful in proving unpaid rent, the Landlords are 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 **\$2,500.00**.

As the Landlords already hold the Tenant's **\$845.00** deposits, 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 **\$1,655.00**. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of the above orders are attached to the Landlords' copy of this decision.

Conclusion

The Tenant has breached the Act by not paying rent. Therefore, the Landlords are granted an Order of Possession and may keep the Tenant's security and pet damage deposit. The Landlords are issued with a Monetary Order for the outstanding balance of rent and the filing fee in the amount of \$1,655.00.

The Tenant's Application is dismissed **without** leave to re-apply as she failed to appear for the hearing. 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: August 23, 2016

Residential Tenancy Branch