



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNR, MNSD, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the corporate Landlord on October 27, 2016 for an Order of Possession based on a notice to end tenancy for cause. The Landlord also applied for a Monetary Order for: unpaid rent; to keep the Tenant’s security deposit; and to recover the filing fee from the Tenant.

An agent for the corporate Landlord (the “Landlord”) appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. However, there was no appearance for the Tenant during the 17 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified that he served the Tenant with a copy of the Application and the Notice of Hearing documents for this hearing by registered mail on October 28, 2016. The Landlord provided a copy of the Canada Post tracking receipt as evidence to verify this method of service.

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 or returning it as unclaimed. As a result, based on the undisputed evidence of the Landlord, I find the Tenant was deemed served with the required documents on November 2, 2016 pursuant to the Act. The hearing continued with the undisputed evidence of the Landlord as follows.

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?

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

Background and Evidence

The Landlord testified that this tenancy started on May 1, 2016 and that the tenancy was taken over by the corporate Landlord on June 16, 2016. The written tenancy agreement was provided into evidence and shows that it is a fixed term tenancy due to expire on April 30, 2017 after which point the tenancy is set to continue on a month to month basis thereafter. The Tenant paid a security deposit of \$475.00 at the start of the tenancy which the Landlord still retains. No interest is payable on this amount.

The Landlord testified that the Tenant had been repeatedly late paying rent for this tenancy. The Landlord testified to and provided bank record evidence that the Tenant had been late paying rent for every month of this tenancy since it started on May 1, 2016. As a result, the Landlord served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on September 6, 2016.

The 1 Month Notice was provided into evidence and shows a vacancy date of October 7, 2016 due to repeatedly late payment of rent. The Landlord testified that the 1 Month Notice was posted to the Tenant's rental unit door with a witness who signed a Proof of Service document to verify this method of service.

The Landlord testified that since the issuing of the 1 Month Notice, the Tenant continued to pay rent late for the months of October, November and December, 2016. The Landlord testified that the Tenant keeps making full rent payments each month but these are continuously being paid late.

The Landlord testified that for rent payments paid by the Tenant after the Tenant was served with the 1 Month Notice, the Landlord has been issuing the Tenant with rent receipts. The Landlord testified that these state that the monies are being accepted for use and occupancy only and the tenancy has not be re-instated.

The Landlord testified that he had claimed for late fees in this tenancy in his monetary claim but understood that because the written tenancy agreement for this tenancy did not provide for a late rent payment fee he was not claiming this amount. The Landlord seeks an Order of Possession to end the tenancy and unpaid rent in the amount of \$470.00 for the balance of December 2016 rent which remains unpaid at the time of this hearing.

Analysis

I have examined the 1 Month Notice and I find that it was completed with the correct information on the approved form as required by Sections 47(3) and 52 of the Act. I also accept the Landlord's oral and witness evidence that the Tenant was served with the 1 Month Notice on September 6, 2016 by posting it to her door.

Section 90(c) of the deeming provisions of the Act state that a document posted to the door is deemed to have been received three days later. I therefore find that the Tenant was deemed served with the 1 Month Notice on September 9, 2016. I also find that pursuant to Section 47(2) a 1 Month Notice must allow for one clear rental months of notice before it can be effective. In this case, the 1 Month Notice served by the Landlord does not allow for one clear months of notice as it has a vacancy date of October 7, 2016. As a result, pursuant to Section 52 of the Act, I correct the vacancy date of the 1 Month Notice to October 31, 2016.

Section 47(4) of the Act allows a tenant to dispute a 1 Month Notice by making an Application within ten days of receiving it. There is no evidence before me to indicate the Tenant applied to dispute the 1 Month Notice. Section 47(5) of the Act states that if a tenant fails to make an Application within ten days, the tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 1 Month Notice and must vacate the rental unit by that date. Therefore, as the Tenant failed to make an Application under the time limits stipulated by the Act, the tenancy ended on the effective vacancy date of the 1 Month Notice.

As the Tenant continues to occupy the rental unit and is currently in rental arrears, the Landlord is granted an Order of Possession which is 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 Supreme Court of British Columbia as an order of that court if the Tenant fails to voluntarily vacate the rental unit.

Section 26 of the Act requires a tenant to pay rent under a tenancy agreement whether or not the landlord complies with the Act. In relation to the Landlord's monetary claim, I accept the Landlord's undisputed evidence that the Tenant has failed to pay rent for December 2016 in the outstanding balance of \$470.00. Therefore, this amount is awarded to the Landlord. Since the Landlord has been successful in this Application, I also grant the recovery of the \$100.00 filing fee for the cost of having to make this Application. Therefore, the total amount awarded to the Landlord is \$570.00

As the Landlord already holds \$475.00 in 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 \$95.00. 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 voluntary payment.

Conclusion

The Tenant did not dispute the 1 Month Notice and continues to occupy the rental unit without paying full rent. Therefore, the Landlord is granted an Order of Possession effective two days after service on the Tenant.

The Landlord is also awarded unpaid rent and the filing fee. The Landlord may achieve this relief by keeping the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of \$95.00.

Copies of the above orders are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by the Landlord.

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: December 15, 2016

Residential Tenancy Branch