



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent or utilities; a Monetary Order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlords withdrew their application for a Monetary Order for unpaid rent at this time. The landlords are at liberty to reapply for this section of their application.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89(2)(d) of the *Residential Tenancy Act (Act)*; by leaving the hearing documents on the tenant's door on November 25, 2016.. The tenant was deemed to be served the hearing documents on the third day after they were posted as per section 90(c) of the *Act*.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Background and Evidence

The landlords testified that this month to month tenancy started on October 01, 2015. The tenant's rent is \$820.00 per month due on the 1st of each month. The tenant paid a security deposit of \$410.00 on October 01, 2015.

The landlords testified that the tenant failed to pay rent for November, 2016 on the day it was due. A 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice) was served upon the tenant on November 02, 2016. The Notice was handed to the tenant in person. The Notice informed the tenant that they have five days to either pay the outstanding rent of \$820.00 or file an application to dispute the Notice. The Notice has an effective date of November 15, 2016.

The landlords testified that the tenant paid \$460.00 on November 03, 2016 but the balance of \$360.00 remains unpaid. The landlords testified that the tenant has also failed to pay rent for December, 2016 and January, 2017.

The landlords seek an Order of Possession effective as soon as possible. The landlords also seek to recover the filing fee of \$100.00.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with the Notice to End Tenancy pursuant to section 88 of the Act. The Notice is deemed to have been received by the tenant on November 02, 2016. The Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy

would end. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlords an Order of Possession effective two days after service of the Order upon the tenant.

I find that the landlords are entitled to be reimbursed for the **\$100.00** cost of filing this application. I order that the landlords retain this amount from the security deposit of \$410.00 leaving a balance \$310.00 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **Two (2) Days after service upon the tenant** pursuant to section 55 of the *Act*. This Order must be served on the tenant. If the tenant fails to comply with this Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: January 13, 2017

Residential Tenancy Branch