



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought an Order of Possession and Monetary Order based on a 10 Day Notice for Unpaid Rent or Utilities issued on December 2, 2016 (the "Notice").

The hearing was conducted by teleconference on *2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on unpaid rent?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

L.V. testified on behalf of the Landlord. She also provided a copy of the tenancy agreement which was signed on August 24, 2012.

The tenancy began October 1, 2013; monthly rent at the time was \$1,480.00 including parking. The rent was raised such that at the time of the issuance of the Notice rent was \$1,517.00. L.V. testified that the rent was raised again and as such at the time of the hearing the rent was \$1,560.00. Copies of the Notice of Rent Increase were provided in evidence by the Landlord.

The Tenants failed to pay the rent for November 2016 and December 2016; in response, and on December 2, 2016 the Landlord issued the Notice indicating the sum of \$3,034.00 owed as of

December 1, 2016. L.V. testified that the Notice was posted to the rental unit door on December 2, 2016.

Section 90 of the *Residential Tenancy Act* provides that documents served by posting to the door are deemed served three days later; accordingly, I find that the Tenants were served as of December 5, 2016.

The Notice informed the Tenants they were required to pay the outstanding rent or make an application for dispute resolution within five days of receipt of the Notice; accordingly, the Tenants had until December 10, 2016.

L.V. testified that the Tenants did not pay the outstanding rent by December 10, 2016. She further testified that the Tenants did not apply for dispute resolution by December 10, 2016 as required.

L.V. testified that the Tenants made the following payments following receipt of the Notice:

- December 15, 2016: \$900.00; and,
- January 3, 2017: \$2,000.00.

She confirmed that as rent for January was \$1,560.00 pursuant to the most rent increase, the sum of \$1,737.00 owed for outstanding rent as of the time of the hearing. She stated that the Landlord sought recover of the \$75.00 in late fees (\$25.00 per month) from the Tenants.

M.H. also testified on behalf of the Tenants.

He testified that he could not remember when he received the Notice.

He further testified that he did not pay the outstanding rent by December 10, 2016 because the Landlord was on holidays. He confirmed the amount outstanding as of the date of the hearing as \$1,737.00.

The Tenant claimed that when he called the residential tenancy branch he was told not to make an application for dispute resolution, but to simply call into the hearing.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I do not accept M.H.'s testimony that staff at the Residential Tenancy Branch told him not to file for dispute resolution. Section 46(4) and 46(5) of the *Act* provide stipulate that if a tenant receives a notice and fails to pay the unpaid rent or make an application, the tenancy will end. Further, M.H. confirmed receipt of the Notice which provides this essential information to tenants as follows:

The first page of the Notice informs the Tenant of the five day deadline as follows:

Tenant: YOU MAY BE EVICTED IF YOU DO NOT RESPOND TO THIS NOTICE

You have five (5) days to pay the rent and utilities (if applicable) to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch.

The second page of the Notice provides the following additional information:

If within 5 days you do not pay the rent and utilities (if applicable) or make an application for dispute resolution, the landlord can apply for an order of possession through the Direct Request process.

Disputing the Notice

- The tenant can make an application for dispute resolution within 5 (five) days after receiving the *10 Day Notice to End Tenancy* (form RTB-30)

Important Facts

- The tenant is not entitled to withhold rent unless ordered by an arbitrator.

For More Information

- Refer to *A Guide for Landlords and Tenants in British Columbia* available on the RTB website and offices.
- Visit the Residential Tenancy Branch office at 400 – 5021 Kingsway, Burnaby BC

In all the circumstances, I find that the Tenants were informed of their obligation to file for Dispute Resolution within five days of service. M.H.'s claimed ignorance of this strict deadline is incongruous with the information clearly provided to them on the Notice.

I find that the Tenants did not pay the outstanding rent and did not apply to dispute the Notice within the five days required under the *Act*. As the Tenants failed to do either, they are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the *Act*, the Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenants have some authority under the *Act* to not pay rent. In this situation the Tenants had no authority under the *Act* to not pay rent.

I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I accept the Landlord's evidence that the sum of **\$1,737.00** was outstanding at the time of the hearing for unpaid rent. As the Landlord failed to claim for late fees on their application for dispute resolution I decline their request for \$75.00 for late fees. The Landlord is at liberty to apply for this amount.

As such, I find that the Landlord has established a total monetary claim of **\$1,737.00** comprised of unpaid rent and I grant the Landlord a Monetary Order under section 67 of the *Act* in this amount. The Landlord must serve the Order on the Tenants and may file and enforce it in the the Provincial Court (Small Claims) if necessary.

Conclusion

The Tenants failed to pay the outstanding rent and did not file to dispute the Notice to End Tenancy within the time required by the *Act*. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession and is granted a Monetary Order for the outstanding rent in the amount of **\$1,737.00**.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 24, 2017

Residential Tenancy Branch