



Dispute Resolution Services

Page: 1

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

The Landlords appeared for the hearing and the female Landlord provided affirmed testimony. There was no appearance by the Tenant during the ten 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 Landlords for this hearing.

The Landlord testified that she served the Tenant with a copy of the Application and the Notice of Hearing documents by registered mail on January 6, 2017. The Canada Post website shows the Tenant received and signed for the documents on January 12, 2017. The Landlord testified that she got a text message from the Tenant confirming that she had received the documents for this hearing.

Based on the undisputed evidence before me, I find the Landlords served the Tenant with the required documents for this hearing pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). The hearing continued with the undisputed evidence of the Landlords.

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 deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord testified that this oral tenancy started around April 2015. Monthly rent of \$700.00 was payable by the Tenant at the start of the tenancy. This amount was then increased during the tenancy to \$725.00 which was payable on the first day of each month. The Tenant paid the Landlords a security deposit of \$350.00 at the start of the tenancy which the Landlords still retain.

The Landlord testified that the Tenant failed to pay full rent for August 2016 leaving an outstanding balance of \$275.00. The Landlord testified that on December 1, 2016 the Tenant failed to pay full rent. As a result, the Landlord personally served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on December 12, 2016 for December 2016 unpaid rent. The 10 Day Notice was provided into evidence and shows a vacancy date of December 22, 2016.

The Landlord testified the Tenant paid \$200.00 on December 16, 2016 leaving an outstanding balance of \$525.00 for December 2016 rent. The Landlord testified that in addition, the Tenant has failed to pay rent for January 2017. Therefore, the Landlord now seeks an Order of Possession to end the tenancy and unpaid rental arrears for a total of \$1,525.00 (\$275.00 + \$525.00 + \$725.00).

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 10 Day Notice, a tenant must pay the overdue rent or make an Application to dispute it; if the tenant fails to do either, then they are conclusively presumed to have accepted the 10 Day Notice and they must vacate the rental unit on the vacancy date.

Having examined the 10 Day Notice, I find the content and the form used complied with Section 52 of the Act. I also accept the undisputed evidence of the Landlords that it was personally served to the Tenant on December 12, 2016 pursuant to Section 88(a) of the Act.

I find there is no evidence before me that the Tenant filed to dispute the 10 Day Notice or made full payment of the rental arrears detailed on the 10 Day Notice. I also accept the undisputed evidence that the Tenant is in rental arrears for a total of \$1,525.00. As a result, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the 10 Day Notice. As this date has now passed and the

Tenant is still residing in the rental unit without paying full 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 may then be filed and enforced in the Supreme Court of British Columbia as an order of that court.

I find the Landlords are entitled to the rental arrears of \$1,252.00 claimed. As the Landlords have been successful in this matter, the Landlords are 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 Tenant to the Landlords is \$1,625.00. As the Landlords hold the Tenant's \$350.00 security deposit, pursuant to Section 72(2) (b) of the Act, I order the Landlords to retain this amount in partial satisfaction of the claim awarded.

As a result, the Landlords are granted a Monetary Order for the remaining balance of \$1,275.00. This order must be served on the Tenant and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court. Copies of the above orders for service and enforcement are attached to the Landlords' copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by the Landlords.

Conclusion

The Tenant failed to pay rent. As a result, the Landlords are granted an Order of Possession effective two days after service on the Tenant. The Landlords are allowed to keep the Tenant's security deposit and are issued with a Monetary Order for the remaining balance of \$1,252.00. 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: January 26, 2017

Residential Tenancy Branch