



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

The application regarding the above-noted tenancy is before me pursuant to s. 58 of the *Residential Tenancy Act* (the “Act”). The landlord is seeking an order of possession and a monetary order based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 1, 2016 (the “10 Day Notice”).

Both the landlord and the tenant attended the hearing. The hearing process was explained and the participants were asked at both the beginning and the end if they had any questions. The participants were given a full opportunity to be heard, to present their affirmed testimony and documentary evidence, to make submissions, and to respond to the submissions of the other party.

At the outset of the hearing, the landlord testified that he served the tenant with the 10 Day Notice on November 1, 2016, by posting it on the door of the rental unit. The landlord provided a Proof of Service document signed by a witness evidencing the same. The landlord had also checked a box on the Proof of Service document indicating that he had personally served the tenant by handing the 10 Day Notice to her but at the hearing he stated that he had misunderstood the meaning of this box and should not have marked it. The tenant testified that the 10 Day Notice was not posted on her door until November 14, 2016, and that she did not receive it until that day. The tenant confirmed that she has not filed an application to dispute the 10 Day Notice.

The landlord testified that he served the tenant with the Notice of Hearing and all materials in evidence on December 17, 2016, by taping a package to the door of the rental unit and by scanning and sending it to the tenant by email. The tenant testified that she had not received anything by email but confirmed a package of materials had been taped to her door. Although she also stated that the package was so overly taped that she could not properly separate and review all the documents, she confirmed that she had notice of this hearing and that she understood that the landlord’s was asserting,

among other things, that October's rent of \$1,000.00 was outstanding as of November 1, 2016. The tenant did not submit any documentary evidence.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. It shows a month to month tenancy beginning in August of 2015 with a rent of \$1,000.00 due on the first of each month. A security deposit of \$500.00 was paid at the start of the tenancy.

The landlord testified that around May of 2016 the tenant indicated she was going to move out and it was agreed that the landlord would apply the security deposit towards May's rent. However, the tenant did not vacate after May. At the hearing the landlord confirmed that, as he has since applied arrears received in November to the security deposit, he is effectively still holding a deposit of \$500.00. The landlord's evidence also included a letter from him to the tenant dated June 15, 2016 concerning May's rent and stating in part as follows: "In May, you paid me \$500 which is half the rent which was paid on May 27th . . . You only gave me half rent and told me to keep the damage deposit as you would be out in June."

The landlord testified that as of the hearing date the tenant still owes \$500.00 for October's rent, and \$1000.00 for each of November, December, and January. The tenant agreed that rent was outstanding for December and January but believed that she had paid some of November's rent. The landlord testified that the tenant had made transfers of \$500.00 each on November 18 and 27 and December 13, 2016, for a total of \$1,500.00, but said that by his accounting the tenant still owed him \$3,500.00 as of the date of the hearing even after applying this \$1,500.00 to her arrears.

The 10 Day Notice dated November 1, 2016 claims the following amounts are outstanding: \$500.00 damage deposit; 450.00 for May; \$1000.00 for October; and \$1000.00 for November.

Analysis

Section 46 of the Act allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due. As per section 46(5) of the Act, if a tenant who has received a 10 Day Notice has not paid the overdue rent or filed an application for dispute resolution within 5 days of receipt of the 10 Day Notice, she is conclusively presumed to have accepted the tenancy ends on the effective date of the 10 Day Notice, and she must vacate the rental unit by that date.

In this case the 10 Day Notice, dated November 1, claims that November rent is overdue. As of November 1, however, this claim was premature, and if the 10 Day Notice were only with respect to November rent, it would have been invalid. However, the amounts claimed for May and October were legitimately claimed as outstanding rent as of November 1. Accordingly, I am considering the 10 Day Notice on the basis of the outstanding rent claimed for May and October.

Here, the effective date of the 10 Day Notice was November 15, 2016. The landlord testified that he served the 10 Day Notice by posting it on the tenant's door, and has provided a signed witness statement to that effect. The tenant has testified that she received the 10 Day Notice on November 14, 2016 and that she did not file an application for dispute resolution. Even accepting the tenant's evidence as to the date that she received the 10 Day Notice, it is clear on the evidence that the only payment made by the tenant within the 5 days after November 14 was in the amount of \$500.00, which was not the whole of October's rent.

Section 55 allows a landlord to apply for an order of possession if a notice to end the tenancy has been given and it has not been disputed within the time specified. Accordingly, I grant the landlord an order of possession effective November 15, 2016, which is therefore the date that this tenancy ended.

However, I am unable to grant an order of possession in the circumstances. Section 89(2) of the Act allows the landlord to apply for an order of possession by posting an application on the door of the rental unit, and this is the method by which the landlord served his application. Applications for monetary orders must be served by one of the methods set out in s. 89(1), however, and service by posting is not permissible.

Another concern with the landlord's application for a monetary order is the lack of supporting evidence. As set out above, the parties disagree on the amount currently outstanding. A monetary award in favour of the landlord will require that evidence of the

amounts paid and outstanding. Accordingly, the landlord's application for a monetary order is dismissed, with leave to reapply.

Conclusion

As the tenant has not paid rent for January, 2017, I grant an Order of Possession to the landlord **effective two (2) days after service** on the tenant. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for a monetary order, with leave to reapply, as the application has not been properly served as required by s. 89(1) and the amounts

As the landlord is successful with respect to his application for an order of possession, I grant the landlord the cost of the filing fee in the amount of \$100.00 pursuant to s. 72(1) of the Act. The landlord continues to hold the tenant's security deposit of \$500.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of s. 72, I authorize the landlord to retain \$100.00 of the security deposit of \$500.00 as recovery of the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 11, 2017

Residential Tenancy Branch