



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an order of possession for unpaid rent and a monetary order for unpaid rent.

The agent for the landlord provided affirmed testimony that on January 17, 2017 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail, to the address noted on the application. A Canada Post tracking number was provided as evidence of service to each tenant.

These documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 and 90 of the Act.

The landlord also provided the tenants with a copy of the Notice of hearing personally and sent a copy to the tenants via email.

Neither tenant attended the hearing.

Preliminary Matters

The landlord applied requesting compensation for unpaid rent up to January 2017. The landlord would like to amend the application to include a claim for unpaid February 2017 rent.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure provides:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

As rent is the most basic term of the tenancy I find, pursuant to section 4.2 of the Rules of Procedure, that the application is amended to include a claim in the sum of \$1,530.00 for loss of February 2017 rent revenue.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy commenced on July 1, 2012. Rent is subsidized. Current rent is \$1,530.00 due on the first day of each month. The landlord is holding a security deposit in the sum of \$594.00. A copy of the tenancy agreement was supplied as evidence.

The landlord submitted a copy of an August 5, 2016 letter to the tenants increasing the rent to \$1,530.00 effective October 1, 2016 as the tenants failed to submit the required annual income verification.

The landlord stated that on December 12, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of December 22, 2016, was served by posting to the tenants' door. Service occurred in the early afternoon.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,918.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The landlord has claimed unpaid rent as follows:

- \$1,288.00 November 2016;
- \$1,530.00 December, 2016;
- \$1,530.00 January 2017; and
- \$1,530.00 February 2017.

The tenants paid \$142.00 on November 25, 2016. No further rent has been paid.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. Therefore, I find that the tenants received the Notice to end tenancy on December 15, 2016.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenants are deemed to

have received this Notice on December 15, 2016, I find that the earliest effective date of the Notice is December 25, 2016.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was December 25, 2016.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenant to vacate the rental unit on December 25, 2016, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenants exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended on the effective date of the Notice; December 25, 2016.

As the tenancy ended effective December 25, 2016 I find that since that time the tenants have been over holding in the rental unit. Residential Tenancy Branch policy suggests that when a tenant over holds the tenant must pay per diem rent for each day the tenant occupies the rental unit.

In the absence of evidence to the contrary, I find that the tenants have not paid rent since a partial payment was made in November 2016. The claim is unopposed by the tenants.

Therefore, I find pursuant to section 67 of the Act that the landlord is entitled to compensation for unpaid rent from November 26 to December 25, 2016 and per diem rent from December 26, 2016 to February 10, 2017; totaling \$4,951.00 (\$1,388.00 November 2016; \$1,530.00 for each December 2016 and January 2017 plus \$503.00 from February 1 to February 10, 2017 inclusive.)

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$594.00 security deposit in partial satisfaction of the claim.

The landlord has been granted an order of possession that is effective two days after service to the tenants. This order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an order of that Court.

Based on these determinations I grant the landlord a monetary order for the balance of \$4457.00. In the event that the tenants do not comply with this order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is entitled to an order of possession and monetary order for unpaid rent and per diem rent.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless 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: February 10, 2017

Residential Tenancy Branch