



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 dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The landlord and an agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and agent were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlord testified that the Notice of Hearing, Application and documentary evidence were each served on the tenants by separate registered mail packages on January 23, 2017. The landlord provided two registered mail tracking numbers receipts in evidence which have been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website, both registered mail packages were signed for and accepted on January 25, 2017 by tenant K.G. Based on the above, I find the tenants were duly served with the Notice of Hearing, Application and documentary evidence on January 25, 2017, the date the two packages were signed for and accepted by registered mail.

Preliminary and Procedural Matter

At the outset of the hearing, the landlord requested to amend the landlord's Application to include the loss of February 2017 rent in the amount of \$2,700.00 as the rental unit continues to be occupied and vacant possession has not been returned to the landlord. The amendment was permitted pursuant to section 64(3(c)) of the *Act* as I find that it is

reasonable that the tenants would know or ought to know that rent is payable on the day it is due in accordance with the tenancy agreement. As a result, the landlord's total monetary claim is increased from \$10,800.00 to \$13,500.00.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on October 1, 2016. Monthly rent in the amount of \$2,700.00 is due on the first day of each month. The tenants did not pay a security deposit or pet damage deposit during the tenancy.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated January 4, 2017, by personal service on tenant A.G. on January 4, 2017 between 10:00 a.m. and 11:00 a.m. at the rental unit and that tenant A.G. accepted the 10 Day Notice from the landlord. The 10 Day Notice included an effective vacancy date of January 14, 2017 and indicated that \$10,800.00 in unpaid rent was owed. The tenants did not dispute the 10 Day Notice and did not pay any of the amount indicated as owing within five days of receiving the 10 Day Notice or any date thereafter. The landlord testified regarding the following unpaid rent and loss of rent by the tenants:

1. October 2016 rent unpaid in the amount of \$2,700.00
2. November 2016 rent unpaid in the amount of \$2,700.00
3. December 2016 rent unpaid in the amount of \$2,700.00
4. January 2016 rent unpaid in the amount of \$2,700.00
5. Loss of February 2017 rent in the amount of \$2,700.00

TOTAL AMOUNT OWING:

\$13,500.00

The landlord submitted the tenancy agreement, 10 Day Notice, and registered mail receipts in evidence.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord and agent during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenants failed to pay rent as claimed and that the landlord has suffered a loss of rent as claimed. I also find that the tenants failed to dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice or pay the amount indicating as owing. The effective vacancy date of the Notice is listed as January 14, 2017. I find the tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was January 14, 2017. The tenants continue to occupy the rental unit by failing to return vacated occupancy to the landlords. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenants. The order of possession applies to all occupants.

Claim for unpaid rent and loss of rent – As the tenants were served and did not attend the hearing, I find the Application of the landlord to be unopposed by the tenants. The landlord testified that \$13,500.00 in rent arrears and loss of rent is owed by the tenants as of the date of the hearing. Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$13,500.00** comprised of unpaid rent and loss of rent.

As the landlord has succeeded with their application, I grant the landlord the recovery of the filing fee in the amount of **\$100.00**.

Pursuant to section 67 of the *Act*, I grant the landlord a monetary order in the amount of **\$13,600.00** comprised of \$13,500.00 in unpaid rent and loss of rent plus \$100.00 for the recovery of the cost of the filing fee.

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord has been granted a monetary order in the amount of \$13,600.00 comprised of \$13,500.00 in unpaid rent and loss of rent plus \$100.00 for the recovery of the cost of the filing fee. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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 16, 2017

Residential Tenancy Branch