



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") to obtain an order of possession for unpaid rent and a monetary order for unpaid rent. The landlord's Application was commenced by way of direct request proceeding which is an ex parte proceeding. An interim decision was rendered on January 25, 2017 adjourning the matter to a participatory hearing to clarify some of the details of the landlord's Application.

The landlord appeared at the adjourned participatory teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide 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 was considered.

The landlord testified that he sent each of the tenants a copy of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") by registered mail. The landlord testified that he sent each of the tenants a separate registered mailing to the rental unit on February 2, 2017. The landlord provided both Tracking Numbers to confirm the mailing. Taking into account that the online registered mail tracking information supports the undisputed testimony of the landlord and in accordance with sections 89 and 90 of the Act, I find that the tenants have been deemed served with the Notice of Hearing on February 7, 2017, the fifth day after the registered mailing.

Issue(s) to be Decided

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

Background and Evidence

The landlord's testimony established that the tenants entered into a fixed term tenancy starting December 1, 2016 and ending January 30, 2017, with an option to continue the tenancy on a month-to-month basis. A tenancy agreement was signed by the tenants on November 26, 2016. Rent in the amount of \$1,600.00 is due on the 30th day of each month for the subsequent month's rent. Although the tenants were supposed to provide the landlord with a security deposit in the amount of \$800.00 and a pet damage deposit in the amount of \$500.00, the landlord never received these deposits.

The landlord testified that on November 30, 2016 he only received a partial payment of rent in the amount of \$1,500.00 for the month of December 2016. The landlord is seeking unpaid rent in the amount of \$100.00 for the month of December 2016.

The landlord testified that on December 17, 2016 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), which had an effective date of December 27, 2016, was handed to the female tenant at 7:00 p.m. The 10 Day Notice indicates that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution. 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 unit by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The amount of unpaid rent shown on the 10 Day Notice is \$1,400.00. The landlord explained that he added the amounts for the damage deposit and the pet deposit that the tenants were supposed to have paid pursuant to the written tenancy agreement. The deposit amounts were included in the landlord's application as unpaid rent due for the month of December 2016.

The tenants did not pay the rent owing within the five days or file an Application for Dispute Resolution. The tenants, however, paid the landlord \$600.00 towards rent on or about December 28, 2016. The tenants did not move out of the rental unit and the landlord has not received any further rent payments for each of the months of January

and February 2017. The landlord is seeking to amend his application to include the full amount of unpaid rent for each of these months.

The landlord is also seeking an order of possession for unpaid rent.

Analysis

Based on the above undisputed testimony and documentary evidence, and on a balance of probabilities, I find the following.

As the tenants were served with the Notice of Dispute Resolution Hearing and did not attend the hearing, I consider this matter to be unopposed by the tenants. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable.

I find that the tenants were required to pay rent in the amount of \$1,600.00 due on the 30th day of each month for the subsequent month. I find that the tenants only paid rent in the amount of \$1,500.00 due for the month of December 2016. Although the 10 Day Notice indicates that the tenants owed \$1,400.00 for unpaid rent, I find that the only amount of rent that was unpaid was \$100.00. Damage deposits and pet deposits, although they were required to be paid by the tenants at the start of the tenancy, are not considered rent under the *Act*.

I also find that the tenants did not pay the full amount of rent that was due for the months of January and February 2017. I find that the tenants are not prejudiced by the landlord's request to amend his application to include the full amount of unpaid rent as the tenants knew or ought to have known that they were required to pay the rent when due.

Based on the foregoing, I find that the landlord is entitled to a monetary order in the amount of \$2,700.00 for unpaid rent as follows:

December 2016 Unpaid Rent	\$ 100.00
January 2017 Unpaid Rent	\$ 1,600.00
February 2017 Unpaid Rent	\$ 1,600.00
Sub Total	\$ 3,300.00
Less Payment from Tenants	\$ 600.00
Total Unpaid Rent	\$ 2,700.00

Section 46(1) of the *Act* stipulates that a 10 day Notice is effective 10 days after the date that the tenant receives the Notice.

I find that the tenants were served with a valid 10 Day Notice on December 17, 2016 that required the tenants to vacate the rental unit on December 27, 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 10 Day Notice 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 are conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice, December 27, 2016.

As the tenancy has ended pursuant to section 46(5), I find that the landlord is entitled to an Order of possession that is effective two days after service on the tenant(s).

Conclusion

Pursuant to section 67, the landlord is granted a monetary order in the amount of **\$2,700.00** which must be served on the tenant(s) as soon as possible. Should the tenant(s) fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 22, 2017

Residential Tenancy Branch