



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), and to recover the filing fee from the Tenant.

An agent for the Landlord named on the Application, who was also an owner of the rental unit, appeared for the hearing and provided affirmed testimony. The Landlord also provided a copy of the notice to end tenancy into evidence prior to the hearing. However, there was no appearance by the Tenant during the 30 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the documents by the Landlord for this hearing.

The Landlord's agent testified that the Tenant was served with a copy of the Application and the Hearing Package personally within three days of getting them on January 31, 2017 from the Residential Tenancy Branch.

In the absence of the Tenant, I accept the undisputed evidence the Landlord served the Tenant with the required documents for this hearing pursuant to Section 89(1) (a) of the Act. The hearing continued to hear the undisputed evidence of the Landlord's agent.

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 Landlord's agent testified that this tenancy started on August 20, 2016 on a month to month basis. Rent is payable by the Tenant in the amount of \$1,200.00 on the first day of each month. No security deposit was paid for this tenancy.

The Landlord's agent testified the Tenant failed to pay full rent for December 2016 in the amount of \$785.00. The Tenant then failed to pay full rent for January 2017. 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 January 18, 2017.

The 10 Day Notice dated January 17, 2017 was provided into evidence and shows a vacancy date of January 28, 2017 due to \$1,985.00 payable on January 1, 2017.

The Landlord's agent testified that the Tenant has not disputed the 10 Day Notice and still continues to occupy the rental unit with several other occupants without paying the rental arrears or any rent for February 2017. As a result, the Landlord now seeks to recover unpaid rent in the amount of \$3,185.00 as well as an Order of Possession to end the tenancy.

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 detailed on the 10 Day Notice.

Having examined the Notice, I find that the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the undisputed evidence before me that the 10 Day Notice was personally served to the Tenant pursuant to Section 88(a) of the Act on January 18, 2017.

Therefore, I find the Tenant had until January 23, 2017 to pay the outstanding rent or make an Application to dispute the 10 Day Notice. There is no evidence before me that the Tenant did either. I also accept the Landlord's agent's oral evidence the Tenant has failed to vacate the rental unit by the vacancy date on the 10 Day Notice.

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 rent, the Landlord is 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 be enforced in the BC Supreme Court as an order of that court.

I find the Landlord is also entitled to unpaid rent in the amount of \$3,185.00 claimed. Since the Landlord has been successful in this Application, I grant the \$100.00 filing fee for the cost of having to make this Application. Therefore, the total amount awarded to the Landlord is \$3,285.00.

The Landlord is issued a Monetary Order for this amount which 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 are attached to the Landlord's copy of this Decision.

Conclusion

The Tenant has failed to pay rent. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenant. The Landlord is also granted a Monetary Order for \$3,285.00 for unpaid rent and recovery of the filing fee. 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: February 27, 2017

Residential Tenancy Branch