



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR OPR MNDC FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on January 11, 2017 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and provided affirmed testimony. The Tenants did not attend the hearing.

The Landlord testified that the Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on both Tenants, in person, by her agent, C.C., on January 11, 2017. I find the Tenants were served with the Landlord's Application package on that date.

The Landlord was provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

This hearing addressed the non-payment of rent by the Tenants. It did not involve a claim for money owed or compensation for damage or loss (MNDC). Accordingly, this aspect of the Landlord's Application is dismissed with leave to reapply.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord submitted with her documentary evidence a copy of the tenancy agreement between the parties. It confirms a fixed-term tenancy for the period from June 15 to December 15, 2016. Thereafter, the tenancy was to continue on a month-to-month basis. Rent in the amount of \$1,400.00 per month is due on the first day of each month. The Tenants did not pay a security deposit.

The Landlord testified she issued a 10 Day Notice to End Tenancy for Unpaid Rent or utilities on December 30, 2016 (the "10 Day Notice"). According to the Landlord, the 10 Day Notice was served on that date by attaching a copy to the door of the Tenants' rental unit. The Landlord provided a Proof of Service form in support. She testified that, at that time, rent in the amount of \$2,800.00 was outstanding. The Landlord testified further that rent was not paid when due on January 1 and February 1, 2017, and that \$5,600.00 is currently outstanding.

The Landlord also seeks to recover the \$100.00 filing fee paid to make the Application.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy and wishes to dispute it has five days to either pay rent or file an application for dispute resolution. When a tenant does not pay rent or file an application for dispute resolution, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In this case, the Landlord testified, and I find, that the Tenants did not pay rent when due. Accordingly, the Landlord served the Tenants with the 10 Day Notice by posting a

copy to the door of the Tenant's rental unit on December 30, 2016. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. I find that the 10 Day Notice is deemed to have been received by the Tenants on January 2, 2017.

As the Tenants did not pay rent or dispute the 10 Day Notice within five days after receiving it, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenants.

The Landlord testified that rent in the amount of \$5,600.00 is currently outstanding. The Tenants did not attend the hearing to dispute this amount, although duly served. Accordingly, I find the Landlord is entitled to a monetary award of \$5,600.00 for unpaid rent. Having been successful, I also find the Landlord is also entitled to recover the \$100.00 filing fee paid to make this Application.

Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$5,700.00, which is comprised of \$5,600.00 for unpaid rent and \$100.00 as recovery of the filing fee.

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after it is served on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$5,700.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision 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 7, 2017

Residential Tenancy Branch