



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This was the landlords' application based on a on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 19, 2017 (the "10 Day Notice"). The landlords applied for an order of possession for unpaid rent and a monetary order for unpaid rent, for authorization to retain all or part of the security and/or pet damage deposits against the unpaid rent, and for return of the filing fee.

The tenants did not attend the hearing. Both of the landlords attended, and were given a full opportunity to be heard, to present affirmed testimony, to refer to documentary evidence, and to make submissions.

As the tenants did not attend the hearing, service of the landlords' application and the notice of hearing were considered. Both of the landlords provided affirmed testimony that they served the tenants by posting two separate application packages on the door of the rental unit. Each package contained its own copy of the application, notice of hearing, and supporting evidence. Each notice of hearing was addressed to a different tenant.

The female landlord testified that the landlords and the tenants live in separate homes on the same property. Although the landlords cannot see the rental unit from their home, they are able to drive by it. She confirmed that the packages had been removed from the rental unit door.

The male landlord further testified that he had spoken with both of the tenants at separate times after posting the application packages on the door of the rental unit, and that both tenants were clearly aware of the landlords' application. The male landlord testified that he has seen the female tenant since posting the application and he has spoken to the male tenant on the telephone since then. He has asked them what they

intend to do but has not received a clear answer. He has told them if that if they pay their rent, the tenancy can continue.

The landlords amended their application during the hearing to add a claim for outstanding January rent and I accepted the amendment. Rule 4.2 of the Rules of Procedure allows for amendments at the time of hearing with respect to matters that can reasonably be anticipated, such as monthly rent.

Issues to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to retain all or part of the security or pet damage deposit against unpaid rent?

Are the landlords entitled to return of the filing fee?

Background and Evidence

The landlords advised that there was no written tenancy agreement. The tenancy began on May 15, 2016 as a month to month tenancy with rent of \$1,000.00 payable on the 15 of each month. A security deposit of 500.00 was paid and the landlord continues to hold that amount.

The landlords testified that they served the tenants with the 10 Day Notice on December 19, 2016 by taping it to the door of the rental suite. A Proof of Service document signed by a witness was included in the landlord's evidence. At that time the tenants were \$1,750.00 in arrears. The landlords also said that the tenants did not pay the rent that was due on January 15, 2017 although they remain in the rental unit.

The tenants have not filed an application to dispute the 10 Day Notice.

Analysis

The landlords provided undisputed evidence at this hearing, as the tenants did not attend. Based on the landlords' undisputed testimony and the Proof of Service document in evidence, I find that the tenants were served with the 10 Day Notice on

December 19, 2016. I also find that the tenants have not paid the arrears, and that there is currently \$2,750.00 outstanding.

Section 46(5) of the Act provides that if a tenant does not pay the amount owing in full or apply to dispute a 10 Day Notice within five days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date.

Here, the tenants did not make an application pursuant to section 46(4) or pay the amount owing within five days of receipt of the 10 Day Notice. In accordance with section 46(5) of the Act, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on December 29, 2016, the corrected effective date on the 10 Day Notice. The tenants and anyone on the premises were required to vacate the premises by that date. As this has not occurred, I find that the landlords are entitled to a two (2) day order of possession, pursuant to section 55 of the Act. I find that the 10 Day Notice complies with section 52 of the Act.

Sections 7(1) and 67 of the Act establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. The landlords provided undisputed evidence that \$2,750.00 is outstanding, inclusive of January's rent.

Section 89(1) of the Act sets out the acceptable methods for service of an application for dispute resolution. Posting on the door is not one of the specified methods of service where an applicant seeks anything other than an order of possession. However, s. 71(2)(c) allows me to find that a document not served in accordance with s. 89 has been sufficiently served. Based on the landlords' undisputed testimony about the location of the rental unit as compared to the location of the landlords' residence, and about the conversations between the male landlord and the tenants, as set out above, I find that the tenants were sufficiently served with the application such that I can issue a monetary order.

As the landlords were successful in this application, I find that they are entitled to recover the \$100.00 filing fee. Accordingly, the landlords are entitled to \$2,850.00 from the tenants.

The landlord continues to hold the tenant's security deposit of \$500.00. Over the period of this-tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security

deposit of \$500.00 in partial satisfaction of the monetary claim and issue a monetary order in the landlords' favour for the balance.

Conclusion

I grant an order of possession to the landlord effective **two (2) days** after service on the tenants. Should the tenant or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order for the landlords for **\$2,350.00**, which allows the landlords to obtain a monetary award for unpaid rent and the filing fee, and to retain the security deposit:

Item	Amount
Rent	\$2,750.00
Filing Fee	\$100.00
Less Security Deposit	-\$500.00
Total Monetary Order	\$2,350.00

The tenants must be served with this order as soon as possible. Should the tenants fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*

Dated: February 6, 2017

Residential Tenancy Branch