



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0926835 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the landlord's application for an order of possession and a monetary order based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 5, 2016 (the "10 Day Notice"). The landlord's application was originally made by direct request pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act") but was adjourned to a hearing to address the issue of service of the 10 Day Notice on the tenants.

Both the owner/landlord and a process server attended at the hearing. Both gave affirmed testimony. The tenants did not attend.

As the tenants did not attend, service of the landlord's application and notice of hearing was considered. The process server testified that he taped two copies of these materials to the door of the rental unit on February 7, 2017. One was addressed to the tenant CB and the other was addressed to the tenant JR. Affidavits of service from the process server attaching photographs of the two separate packages taped to the door were in evidence. The landlord also testified that he had spoken with the tenants within the last couple of weeks when they called to ask that he address an issue with hydro and that they indicated that they were aware of today's hearing. The landlord further testified that he is not aware of whether CB continues to reside at the rental unit and that CB has not provided a forwarding address or phone number in any event.

The adjudicator considering the landlord's direct request application has already found that the tenants were served with the direct request notices on February 4, 2017.

Based on the above, I find that the tenants were served with the application and notice of today's hearing pursuant to s. 89(2). I also find that the tenants were sufficiently served for the purposes of s. 89(1) pursuant to s. 71(2)(c).

The landlord amended his application during the hearing to add a claim for additional outstanding rent since January, 2017 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 this.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the Act?

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67 of the Act?

Background and Evidence

This tenancy started on June 1, 2014. The residential tenancy agreement in evidence, signed by the landlord and the tenant CB in May of 2014, indicates a monthly rent of \$1,000.00 due on the first day of the month. The landlord also submitted an addendum to the tenancy agreement adding tenant JR to the agreement. A security deposit of \$500.00 was paid at the beginning of the tenancy and remains in the landlord's possession.

The process server testified that he served the tenant JR with the 10 Day Notice on January 5, 2017 personally and that he left another copy of the 10 Day Notice with JR for service on CB. An affidavit of service indicating the same was included in evidence.

The landlord submitted a ledger showing the rent owing and paid during the relevant portion of this tenancy. The ledger was consistent with the 10 Day Notice which indicates that as of January 5, 2017 the tenants owed \$4,100.00 in unpaid rent. The landlord testified that the tenants paid \$500.00 in both February and March, with the result that \$5,100.00 is now outstanding.

Analysis

The landlord and the process server provided undisputed evidence at this hearing, as the tenants did not attend. Based on the undisputed testimony of the landlord and the process server and the documentary evidence, I find that both JR and CB were served with the 10 Day Notice on January 5, 2017.

Section 46(5) of the Act provides that if a tenant does not pay arrears in full or apply to dispute a 10 Day Notice within five days of receipt of that notice, 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 have still not paid their arrears. Nor have they made an application pursuant to section 46(4). In accordance with section 46(5) of the Act, the failure of the tenants to take either of the above actions within five days of receipt of the 10 Day Notice led to the end of this tenancy on January 15, 2017, the 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 landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the Act. I find that the landlord's 10 Day Notice complies with section 52 of the Act.

Sections 7 and 67 of the Act provided 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 landlord provided undisputed evidence that the tenants owe \$5,100.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

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 authorize the landlord to retain the tenant's security deposit of \$500.00 in partial satisfaction of the monetary claim.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenants**. Should the tenants 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 landlord in the following terms, which allows the landlord to obtain a monetary award for unpaid rent and the filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Arrears and loss of rental income	\$5,100.00
Filing Fee	\$100.00
Less Security Deposit	-\$500.00
Total Monetary Order	\$4,700.00

I issue a monetary order in the landlord's favour in the amount of **\$4,700.00**. 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 s. 9.1(1) of the 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: March 03, 2017

Residential Tenancy Branch