



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter
privacy]
DECISION

Dispute Codes OPR MNR

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenants did not attend this hearing, which lasted approximately 15 minutes. The landlord's agent, RG, appeared on behalf of the ('the landlord'), and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord testified that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated December 2, 2016, with an effective date on December 12, 2016, by posting it on the door of the rental unit. A Proof of Service was signed by a witness and the landlord confirming the service of the 10 Day Notice on December 2, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on December 5, 2016, three days after its posting. Accordingly the effective date of the 10 Day Notice is corrected to December 15, 2016.

The landlord testified that the hearing package was served to the tenants by registered mail on February 8, 2017. A copy of the registered mail receipt was included in the landlord's evidence. In accordance with sections 89 and 90 of the *Act*, I find the tenants deemed served with the hearing package on February 13, 2017.

Issues(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 tenancy agreement that was submitted as part of the Direct Request process did not contain the address of the rental unit, and only contained the signature of one tenant, whose name was not identified on the agreement. The landlord confirmed in the hearing that the address on the application is the address of the tenancy, and that the signature on the tenancy agreement belonged to one of the tenants, EM, who is one of the tenants in this tenancy.

The landlord could not confirm whether the tenants were still residing at the rental unit, but requested an Order of Possession for unpaid rent. Rent is currently set at \$1,200.00 per month, payable on the first day of each month. The landlord currently holds a \$600.00 security deposit for this tenancy.

The landlord issued the 10 Day Notice, indicating an effective move-out date of December 12, 2016. The notice states that the tenants failed to pay rent in the amount of \$1,200.00, which was the total rent outstanding at the time the notice was issued. The landlord provided undisputed testimony that the tenants had not paid rent of \$1,200.00 for December 2016, and the rent remains outstanding. The landlord is seeking a monetary order of \$1,200.00.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on December 10, 2016, within five days of being deemed to have received the 10 Day Notice. The tenants did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received 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 15, 2016, the corrected effective date of the 10 Day Notice. 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*.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$1,200.00 for December 2016. Therefore, I find that the landlord is entitled to \$1,200.00 in rental arrears for the above period.

The landlord continues to hold the tenants' security deposit of \$600.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit of \$600.00 plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

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, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a \$600.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent, and also allows the landlord to retain the tenants' security deposit. The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order 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*.

Dated: March 13, 2017

Residential Tenancy Branch