



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

A hearing was convened to deal with the landlord's application seeking an order of possession and a monetary order based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 5, 2017.

The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony and documentary evidence, and to make submissions.

As the tenant did not attend the hearing, service of the landlord's application and the notice of hearing were considered. The landlord provided affirmed testimony that he served the tenant with these materials on February 15, 2017 by registered mail to the rental unit address. He also sent them by email to the tenant's email address. The landlord provided a Canada Post registered mail tracking number but also advised that the registered mail had been returned on February 24, and that the tenant was occupied with his job and his daughter and may not have had a chance to pick it up. However, the landlord also testified that he had spoken with the tenant on today's date, and that the tenant had advised he was not able to attend the hearing because he was occupied at the courthouse with his lawyer on another matter. Based on the landlord's testimony I accept that the tenant was aware of this hearing and was sufficiently served with the application under s. 72(2)(c) of the Act.

The landlord amended his application during the hearing to add a claim for outstanding February and March 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 this.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

According to the written tenancy agreement in evidence and the landlord's affirmed and undisputed evidence, this tenancy began on September 1, 2016 as a one year fixed term tenancy with an expiry date of August 31, 2017. Rent of \$1,350.00 is payable on the first day of each month. A security deposit of \$675.00 was paid and the landlord continues to hold that deposit.

The landlord testified that the tenant owes partial rent for November of 2016 and full rent for December, 2016 and for January – March, 2017, inclusive. He further testified that he served the tenant with the 10 Day Notice by fax to the tenant at his employer's fax number, which number had been provided by the tenant. A Proof of Service document signed by the landlord at attaching the fax confirmation sheet was in evidence. The landlord also testified that he has had many conversations with the tenant since service of the 10 Day Notice at issue. The landlord kept a record of all such conversations, which included dates of January 6, 11, 18, 19, and February 10 and 13. The landlord stated that the tenant is aware of the 10 Day Notice and that many of the phone conversations that he has recorded have been around negotiating the tenant's payment of rent, including the possibility of a payment plan for arrears owing.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. Based on the landlord's testimony and the documentary evidence, I find that the tenant was served with the 10 Day Notice on January 6, 2017.

Section 46(5) of the Act provides that if a tenant does not apply to dispute a 10 Day Notice or pay the arrears owing in full 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 tenant did not make an application pursuant to section 46(4) within five days of receipt of the 10 Day Notice. Nor has he paid the arrears indicated on the 10 Day Notice. In accordance with section 46(5) of the Act, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on January 16, 2017, 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 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 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 landlord provided undisputed evidence that the tenant was paid only \$680.00 of the \$1,350.00 owing for November and that he has not paid rent at all for December, 2016 – March, 2017, inclusive. The landlord claims that an additional \$100.00/month is owing based on an agreement that the tenant would pay that amount every month that rent was late. However, s. 7 of the *Residential Tenancy Regulation* allows a late charge of no more than \$25.00/month and there is no provision for the \$100.00 payment in the tenancy agreement in any event. I therefore decline to award the landlord any late fees. I find that the landlord is entitled to \$670.00 for November and \$1,350.00 for December – March, inclusive, for a total of \$6,070.00 in rental arrears for the above period.

The landlord continues to hold the tenant's security deposit of \$675.00. 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 \$675.00 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 tenant. 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 landlord in the following terms, which allows the landlord to obtain a monetary award for unpaid rent and the filing, and to retain the security deposit for this tenancy:

| Item | Amount |
|--|------------|
| Rent still owing for November | \$670.00 |
| Rent December – March (\$1,350.00 x 4) | \$5,400.00 |
| Less Security Deposit | -\$675.00 |
| Total Monetary Order | \$5,395.00 |

I issue a monetary order in the landlord's favour in the amount of \$5,395.00 against the tenant. The tenant must be served with this order as soon as possible. Should the tenant 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: March 08, 2017

Residential Tenancy Branch