



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MND, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent and for cause pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on February 17, 2017. The landlord provided undisputed affirmed testimony that the package was returned by Canada Post as "unclaimed" after attempts at service were made. I accept the undisputed affirmed evidence of the landlord and find that although the tenant did not receive the package, the package was served to the known mailing address where notice(s) were left for the tenant to pick up the package. As such, I find that both parties have been sufficiently served as per section 90 of the Act.

During the hearing the landlord withdrew part of the monetary claim for damages. As such, no further action is required for this portion of the application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent and/or cause?

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Background, Evidence and Analysis

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on July 1, 2014 on a fixed term tenancy ending on July 1, 2015 as shown by the submitted copy of the signed tenancy agreement dated June 5, 2014. The monthly rent is \$950.00 payable on the 1st day of each month. A security deposit of \$500.00 was paid on June 15, 2014. An agreement was made for the tenant to pay \$130.00 for utilities each month.

The landlord seeks an order of possession as a result of the 1 Month Notice/10 Day Notice for unpaid rent/utilities and a monetary claim for unpaid rent and utilities of \$2,290.00 which consists of:

\$130.00	Unpaid Utilities, January
\$130.00	Unpaid Utilities, February
\$130.00	Unpaid Utilities, March
\$950.00	Unpaid Rent, February
\$950.00	Unpaid Rent, March

The landlord seeks an order of possession as a result of a 1 Month Notice to End Tenancy for Cause dated December 31, 2016 and a 10 Day Notice to End Tenancy for Unpaid Rent dated February 4, 2017.

The landlord provided undisputed affirmed testimony that the tenant was served with the 1 Month Notice dated December 31, 2016 by posting it to the rental unit door with a witness on December 31, 2016. The landlord has provided a copy of a proof of service document which confirms that service was made with a witness on December 31, 2017. The 1 Month Notice sets out an effective end of tenancy date of January 31, 2017. I find that as the 1 Month Notice was posted to the rental unit door on December 31, 2016 it is deemed served 3 days later as per section 89 of the Act. As such, the effective end of tenancy date is corrected as per section 53 of the Act to February 28, 2017. The 1 Month Notice sets out the 2 reasons for cause as:

- the tenant or person permitted on the property by the tenant has:
 - put the landlord's property at significant risk; or
- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property.

The landlord provided undisputed affirmed testimony that the 10 Day Notice dated February 4, 2017 was served to the tenant by posting it to the rental unit door on February 4, 2017. The 10 Day Notice sets out that the tenant failed to pay rent of \$950.00 and \$260.00 in unpaid utilities that was due on February 1, 2017. The landlord provided a copy of a proof of service document which states that the tenant was served on February 4, 2017 with a witness and provides an effective end of tenancy date of February 17, 2017. The landlord stated that no rent has been paid for March 2017 for \$950.00 as well.

The landlord provided undisputed affirmed testimony that as of the date of this hearing, the tenant has not paid any rent or utilities since the two notices were serviced. The landlord also stated that he is not aware of the tenant filing any applications for dispute of the notice(s) nor has the landlord cancelled the two notices.

I accept the undisputed affirmed evidence of the landlord and find that the landlord has provided undisputed affirmed evidence that the tenant was served with the 1 Month Notice and the 10 Day Notice as claimed. The tenant having been served has not vacated the rental unit nor has she filed an application to dispute either of the two notice(s).

Section 47(1)(c) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has allowed an unreasonable number of occupants in the unit.

Pursuant to subsection 47(5), the 1 Month Notice states that the tenant had ten days, from the date of service of that notice, to apply for dispute resolution or the tenant would be presumed to have accepted that the tenancy would end on the effective date of the 1 Month Notice. The tenants did not apply to dispute the 1 Month Notice within ten days from the date of service and as such is conclusively presumed to have accepted that the tenancy was at an end as of the date of the 1 Month Notice on February 28, 2017. I find that the landlord has established a claim for an order of possession as of the corrected date of the 1 Month Notice. As that has not occurred, I find that the landlord is entitled to a two-day order of possession. The landlord will be given a formal order of possession which must be served on the tenant(s). If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by February 17, 2017. As that has not occurred, I find that the landlord is entitled to a two-day order of possession. The landlord will be given a formal order of possession which must be served on the tenant(s). If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

I also accept the undisputed affirmed evidence of the landlord and find that the tenant has failed to pay rent of \$1,900.00 and utilities of \$390.00 totalling, \$2,290.00.

The landlord having been successful in his application is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$2,390.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court and enforced as orders of those courts.

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 14, 2017

Residential Tenancy Branch