



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's Application: OPR, OPC, MND, MNR, MNSD, MNDC, FF
Tenant's Application: CNC, CNR, LAT, OLC, LRE

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution made by the Landlord and one made by the Tenant.

The Landlord applied on March 7, 2017 for an Order of Possession for cause and unpaid rent, and for a Monetary Order for: unpaid rent; damage to the rental unit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to keep the Tenant's security deposit; and to recover the filing fee from the Tenant.

The Tenant applied on March 7, 2017 to: cancel the notice to end tenancy for cause and unpaid rent; for authorisation to change the locks to the rental unit; for the Landlord to comply with the Act, regulation or tenancy agreement; and to suspend or set conditions on the Landlord's right to enter the rental unit.

Preliminary Issues

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Tenant despite the Tenant's Application being scheduled for the same time as the Landlord's Application.

The Landlord also testified that he had not been served with the Tenant's Application. There was also no submission of evidence prior to this hearing from the Tenant that was before me. As there was no appearance for the Tenant during the 33 minute hearing, I dismissed the Tenant's Application without leave to re-apply.

I then turned my mind to the service of documents by the Landlord. The Landlord testified that the Tenant was served with a copy of the Application and the Hearing Package to the rental unit address on March 10, 2017 by registered mail. The Landlord provided the Canada Post tracking number into evidence to verify this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenant was deemed served with the required documents on March 15, 2017 pursuant to the Act.

At the start of the hearing, the Landlord explained that his monetary claim consisted of unpaid rent and damage to the rental unit. However, the Landlord did not know or disclose an amount for damages caused by the Tenant but stated that the Tenant had not cleaned the carpets. I informed the Landlord that his claim for damages to the rental unit was premature as the Tenant has an obligation to repair any damage to the rental unit and leave the rental unit clean at the end of the tenancy. The Tenant's obligation to do this is still ongoing at the time of this hearing. Therefore, I provide leave for the Landlord to reapply for damage to the rental unit after the tenancy has ended. The Landlord had no objection to this.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started on June 1, 2013 for a series of three fixed term one year tenancies and currently it is in a month to month tenancy. A written tenancy agreement was completed which established that rent is payable by the Tenant in the amount of \$7500.00 on the first day of each month. The Tenant paid a security deposit of \$375.00 on June 1, 2013 which the Landlord still retains.

The Landlord testified that the Tenant was served with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on February 21, 2017. The 1 Month Notice

had a vacancy date of March 31, 2017 and the reason for ending the tenancy was for repeatedly late payment of rent.

The Landlord testified that on February 1, 2017 the Tenant failed to pay rent. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") by posting it to the Tenant's door on February 21, 2017 along with the 1 Month Notice.

The 10 Day Notice was provided into evidence and shows a vacancy date of March 5, 2017 due to unpaid rent of \$750.00 payable on February 1, 2017. The Landlord testified that since the issuing of the notices to end tenancy, the Tenant has failed to pay rent for March and April 2017. The Landlord now seeks to claim three months of unpaid rent and an order to end the tenancy as the Tenant is still occupying the rental unit.

Analysis

I first turn my mind to the 10 Day Notice. Having examined the copy of the 10 Day Notice, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's testimony that the 10 Day Notice was served to the Tenant by attaching it to the rental unit door on February 21, 2017 pursuant to Section 88(g) of the Act. Section 90(c) of the Act states that a document posted to the door is deemed to have been received three days later. The Tenant had applied to dispute the notices to end tenancy so this is evidence that the Tenant received the 10 Day Notice. Pursuant to the Act, I find the Tenant is deemed to have received the 10 Day Notice on February 24, 2017.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not a landlord complies with the Act. Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a 10 Day Notice, a tenant must pay the overdue rent or make an Application to dispute it; if the tenant fails to do either, then they are conclusively presumed to have accepted the 10 Day Notice and must vacate the rental unit on the vacancy date.

Although the Tenant filed her Application to dispute the 10 Day Notice, the Tenant failed to appear for the hearing to prove that she had grounds or authority to withhold rent since being served with that 10 Day Notice. The serving of a 1 Month Notice to a tenant is also not legal grounds to withhold rent under the Act. Therefore, I am only able to conclude that pursuant to the Act, the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the 10 Day Notice. As the vacancy date on the 10 Day Notice has now passed and the Tenant is in rental arrears and

continues to occupy the rental unit, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant.

This order must be served on the Tenant and can then be enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit. As the tenancy has been ended through the 10 Day Notice, I did not examine or make findings on the Landlord's 1 Month Notice as this is now a moot issue.

The Landlord is also awarded the unpaid rent for the months of February, March, and April 2017 in the amount of \$2,250.00. As the Landlord has been successful in his Application, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$2,350.00.

As the Landlord already holds the Tenant's \$375.00 security deposit, pursuant to Section 72(2) (b) of the Act, I order the Landlord to retain this amount in partial satisfaction of the claim awarded. The Landlord is issued with a Monetary Order for the outstanding balance of \$1,975.00. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court. Copies of the above orders are attached to the Landlord's copy of this Decision and the Tenant may also be held liable for any enforcement costs.

Conclusion

The Tenant breached the Act by not paying rent. The Landlord is granted a two day Order of Possession. The Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the balance of unpaid rent and the filing fee of \$1,975.00. The Landlord's monetary claim for damages to the rental unit is dismissed with leave to re-apply. The Tenant's Application is dismissed **without** leave to re-apply. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act

Dated: April 04, 2017

Residential Tenancy Branch