



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to: keep the Tenant's security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the filing fee from the Tenant.

The Landlord and his son appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, there was no appearance by the Tenant during the 16 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the documents by the Landlord for this hearing.

The Landlord testified that the Tenant was served with a copy of the Application and the Hearing Package by registered mail on March 13, 2017 to the rental unit. The Landlord provided the Canada Post tracking number into evidence to verify this method of service. The Canada Post website shows that this was delivered to the Tenant on March 30, 2017. In the absence of the Tenant, I accept the undisputed evidence that the Landlord served the Tenant with the required documents for this hearing pursuant to Section 89(1) (c) of the Act.

During the hearing the Landlord withdrew his monetary claim for unpaid rent because the Tenant was not in any rental arrears at the time of this hearing. The Landlord also withdrew his claim for unpaid utilities as the Landlord was unable to determine the exact amount that the Tenant owed at the time of this hearing. The Tenant is cautioned that any unpaid utilities for this tenancy must be paid, and the Landlord is at liberty to re-apply for unpaid utilities.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started on December 2, 2016 for a fixed term of six months which then continued on a month to month basis thereafter. Rent under the signed tenancy agreement is payable by the Tenant in the amount of \$1,500.00 on the first day of each month. The Tenant paid a \$750.00 security deposit which the Landlord still retains in trust.

The Landlord testified the Tenant failed to pay full rent on March 1, 2017. 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. The Landlord testified that although the 10 Day Notice details that it was served on March 1, 2017, this was the day the 10 Day Notice was prepared. However, it was not served to the Tenant until March 2, 2017. The Landlord provided a Proof of Service document to verify this method of service on which the witness declares the Landlord served the 10 Day Notice on March 2, 2017.

The 10 Day Notice dated March 1, 2017 was provided into evidence and shows a vacancy date of March 10, 2017 due to \$1,150.00 payable on March 1, 2017. The Landlord clarified that the amount detailed on the 10 Day Notice as outstanding was a clerical mistake and that the actual amount owed at the time was \$1,050.00.

The Landlord's son explained that the Tenant had paid the outstanding rent for March 2017 on March 31, 2017 and at this time the Tenant had also paid for April 2017 rent. The Landlord testified that he accepted the money but informed the Tenant that he was still pursuing the ending of the tenancy through the 10 Day Notice as March 2017 was paid outside of the required time limit detailed. The Landlord testified that he informed the Tenant that she had until the end of April 2017 to vacate the rental unit. As a result, the Landlord now seeks to end the tenancy for unpaid rent.

Analysis

Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement whether or not the 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 they must vacate the rental unit on the vacancy date detailed on the 10 Day Notice.

Having examined the 10 Day Notice, I find that the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the undisputed evidence before me that the 10 Day Notice was served to the Tenant on March 2, 2017 pursuant to Section 88(g) of the Act.

Section 90(c) of the Act provides that a document served by posting it to the door is deemed to have been received three days later. Therefore, I find the Tenant was deemed to have received the 10 Day Notice on March 5, 2017 and had until March 10, 2017 to either pay the outstanding rent or make an Application to dispute the 10 Day Notice. There is no evidence before me that the Tenant took any of these actions within this time limit. Accordingly, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the 10 Day Notice.

However, although the Tenant did pay the rental arrears, this was paid outside of the time limit provided by the Act and detailed on the 10 Day Notice. I accept the Landlord's undisputed oral evidence that the Tenant was informed that despite the rental arrears being paid by the Tenant outside of the vacancy date of the 10 Day Notice, the Tenant was still required to vacate the rental unit pursuant to the late payment of rent. Therefore, I find the Landlord did not re-instate the tenancy. Accordingly, the tenancy must now end as the Tenant failed to comply with the Act after being served with the 10 Day Notice.

As the vacancy date on the 10 Day Notice has now passed and the Tenant has paid rent for April 2017, the Landlord is entitled to an Order of Possession which is effective at 1:00 p.m. on April 30, 2017. This order must be served on the Tenant and may then be enforced in the BC Supreme Court as an order of that court. Copies of this order are attached to the Landlord's copy of this Decision and the Tenant maybe held liable for any enforcement costs incurred by the Landlord.

As the Landlord has been successful in ending the tenancy and the Tenant failed to appear, I grant the Landlord the \$100.00 filing fee paid to make the Application. Pursuant to Section 72(2) (b) of the Act, the Landlord may obtain this relief by deducting \$100.00 from the Tenant's security deposit.

Conclusion

The Tenant has failed to pay rent within the time limits set by the Act and the 10 Day Notice. As a result, the Landlord is granted an Order of Possession effective on April 30, 2017. The Tenant must pay any outstanding utility arrears and must provide vacant possession to the Landlord of the rental unit on this date.

The Landlord withdrew his monetary claim for unpaid rent as there are no longer any rental arrears. The Landlord's claim for utilities was withdrawn but the Landlord is provided leave to re-apply. The Landlord may recover the filing fee from the Tenant's security deposit.

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 11, 2017

Residential Tenancy Branch