



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0927000BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on April 6, 2017. The Landlord applied 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 *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and, to recover the filing fee from the Tenant.

An agent for the company Landlord named on the Application appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. The Tenant failed to appear for the 16 minute hearing and provided no evidence prior to the hearing.

As a result, I turned my mind to the Landlord's service of paperwork for this hearing. The Landlord's agent testified that a copy of the Application and the Hearing package were served to the Tenant by attaching them to the Tenant's door on April 6, 2017.

Section 89 of the Act determines the methods of service for the Application. In relation to the Landlord's Application for an Order of Possession, I am able to accept the Landlord's method of service in accordance with Section 89(2) (d) of the Act. Section 90(c) of the Act provides that a document attached to a door is deemed to have been received three days after being posted. Therefore, based on the undisputed evidence before me, I find the Tenant was deemed served with the Landlord's Application for an Order of Possession on April 9, 2017.

However, an Application for a monetary claim cannot be served by attaching it to the Tenant's door and is limited to the methods stipulated by Section 89(1) of the Act. Therefore, as the Landlord's monetary Application has not been served to the Tenant in accordance with the Act, I am unable to consider this portion of the Application and I

dismiss it with leave to reapply. As a result, I continued to hear the Landlord's undisputed evidence in relation to the Order of Possession.

Issue(s) to be Decided

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

Background and Evidence

The Landlord's agent testified that she only recently became an agent of the company Landlord and therefore her knowledge of the history of this tenancy was limited. However, the Landlord testified that this tenancy began in either 2008 or 2009 on a month to month basis. The Tenant's rent is payable in the amount of \$425.00 on the first day of each month. The Landlord's agent testified that the Tenant paid half this amount as a security deposit which the Landlord still holds in trust.

The Landlord's agent testified that by March 1, 2017, the Tenant was in rental arrears in the amount of \$3,398.00. The Landlord's agent explained that the Tenant had been given multiple opportunities to catch up with rent but she never did.

The Landlord provided a handwritten account of the rental arrears. As a result, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), on March 2, 2017. The 10 Day Notice, which was provided into evidence, was attached to the Tenant's door and shows a vacancy date of March 17, 2017, due to \$3,398.00 payable on March 1, 2017.

The Landlord's agent testified that the Tenant did make a partial payment but this only brought the amount down to \$3,353.00 by the end of March 2017. The Landlord's agent testified that the Tenant has also failed to pay rent for April and May 2017. As a result, the Landlord now seeks an Order of Possession to end the tenancy for unpaid rent.

Analysis

Having examined the 10 Day Notice, I find that the contents on the approved form complied with Section 52 of the Act. Based on the undisputed evidence of the Landlord's agent, I accept the Tenant was served the 10 Day Notice by attaching it to the Tenant's door. As a result, using the deeming provisions of Section 90(c) of the Act, I find that the Tenant was deemed served with the 10 Day Notice on March 5, 2017.

Sections 47(4) and (5) of the Act provides that within five days of a tenant receiving a 10 Day Notice, the tenant must pay the overdue rent or make an Application to cancel it; if the tenant fails to do either, then they are conclusively presumed to have accepted the end of the tenancy and they must vacate the rental unit on the vacancy date of the 10 Day Notice.

There is no evidence before me that the Tenant paid the total amount of outstanding rent on the 10 Day Notice or made an Application to dispute it by March 10, 2017. Therefore, I find that the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of March 17, 2017.

As a result, the Landlord is entitled to an Order of Possession. As the vacancy date on the 10 Day Notice has now passed and the Tenant is occupying the rental unit without paying rent, I find the Landlord is entitled to an Order of Possession effective **2 days after service on the Tenant**. This order may then be filed and enforced in the BC Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

As the Landlord has been successful in this matter, the Landlord is also entitled to the \$50.00 filing fee for the cost of this Application. Pursuant to Section 72(1) (b) of the Act, the Landlord may recover this filing fee by deducting this amount from the Tenant's security deposit held by the Landlord.

Conclusion

The Tenant has breached the Act by failing to pay rent. Therefore, the Landlord is granted a two day Order of Possession. The Landlord may recover the filing fee from the Tenant's security deposit. The Landlord did not serve the Tenant with the monetary claim pursuant to the Act. Therefore, the Landlord's monetary claim is dismissed with 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: May 11, 2017

Residential Tenancy Branch