



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on May 19, 2017. The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. However, the Tenant failed to appear for the 35 minute hearing and provided no evidence prior to the hearing. Therefore, I turned my mind to the Landlord's service of documents for this hearing.

The Landlord testified that a copy of the Application and the Hearing Package was served to the Tenant by attaching them to the Tenant's door on June 5, 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 June 8, 2017.

However, a landlord's 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 request for 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 testified that this tenancy began on December 1, 2016 for a fixed term due to expire on November 30, 2017. The Landlord provided a signed residential tenancy agreement into evidence which shows the rent payable by the Tenant is \$800.00 on the first day of each month. The Landlord confirmed that while a security deposit was requested from the Tenant, one was not paid and is still owed.

The Landlord then pointed me to section 4 of the tenancy agreement which is initialed by the Tenant and states "\$100 for utility each month to be calculated at the end of each month". The Landlord explained that pursuant to this agreement, the Tenant would have ended up paying more for the utilities which comprised of electricity and heat, so the parties agreed it would be fixed at \$100.00 per month.

The Landlord testified that the Tenant only paid \$100.00 each for the first two months of the tenancy and has failed to pay the utilities thereafter. The Landlord testified that the Tenant has also paid rent habitually late in this tenancy. Although the Tenant is not in any rental arrears, the Landlord requests an Order of Possession effective for the end of July 2017 for unpaid utilities.

The Landlord testified that the Tenant failed to pay rent and utilities on February 1, 2017. As a result, the Tenant was served with a notice to end tenancy for unpaid rent and utilities. The Landlord testified that within five days of the Tenant receiving the notice to end tenancy, he paid the rent but not the utilities.

The Tenant then failed to pay rent and utilities on April 1, 2017. As a result, the Landlord served the Tenant with a written demand letter dated April 2, 2017 requesting rent for April 2017 and unpaid utilities which, by that time, had accumulated to \$300.00. The written demand letter was provided into evidence.

The Landlord testified that on April 8, 2017 the Tenant was served with another notice to end tenancy for unpaid rent of \$800.00 for April 2017 and unpaid utilities of \$300.00. The Landlord testified that the Tenant paid the rent within five days of receiving the notice to end tenancy but failed to pay the utility arrears.

The Landlord testified that again, the Tenant failed to pay rent and the utilities on May 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") dated May 2, 2017, The 10 Day Notice was attached to the Tenant's door on May 3, 2017 and provided into evidence showing amounts payable of \$800.00 in rent and \$400.00 in utilities.

The Landlord testified that when he spoke to the Tenant later that day, the Tenant told him he does not need to pay utilities, despite the initialed agreement to do so. The Landlord testified that he informed the Tenant that pursuant to the 10 Day Notice he had served on May 3, 2017, the Tenant was to leave the rental unit ten days later or pay the rent or utilities.

The Landlord testified that the Tenant again paid the rent within five days of receiving the May 2, 2017 10 Day Notice but not the utilities. As a result, the Landlord made his Application on May 19, 2017. The Landlord testified that the Tenant has also failed to pay utilities for June and July 2017.

Analysis

Section 26(1) of the Act requires a tenant to pay rent under a tenancy whether or not the landlord complies with the *Residential Tenancy Act* (the "Act"). Section 46(1) of the Act allows a landlord to end a tenancy for unpaid rent. Section 46(6) of the Act provides that if a tenancy agreement requires a tenant to pay utility charges to the landlord and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give a 10 Day Notice.

I accept the undisputed evidence before me that the Tenant was required to pay utilities in the amount of \$100.00 per month. This is because the Tenant signed and initialed the tenancy agreement to reflect this requirement and the Tenant paid \$100.00 for two months of this tenancy. I accept that the Landlord served the Tenant with a written demand letter requiring the Tenant to pay utilities, and accept that this amount remains unpaid 30 days later.

Based on the undisputed evidence of the Landlord, 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 May 6, 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 has paid the outstanding utilities in this tenancy or filed an Application to dispute the notices to end tenancy that were served to him. Policy Guideline 11 on withdrawal of notices to end tenancy states that as a general rule the giving of a second notice to end tenancy does not operate as a waiver of a notice to end tenancy already give.

Therefore, I find that the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the notices to end tenancy.

As a result, I grant the Landlord's request for an Order of Possession effective for the end of July 2017. This order must be served on the Tenant and 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. The Tenant may also be held liable for any enforcement costs incurred by the Landlord. Copies of the Order of Possession for service are attached to the Landlord's copy of this Decision.

Conclusion

The Tenant has breached the Act by failing to pay utilities in this tenancy. Therefore, the Landlord is granted an Order of Possession effective at 1:00 p.m. on July 31, 2017. 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: July 20, 2017

Residential Tenancy Branch