



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, OPC, 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") for an Order of Possession for unpaid rent and for cause. The Landlord also filed a monetary claim for: unpaid rent; 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.

The Landlord, and his father who was a witness in this hearing, appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, there was no appearance for the Tenant during the 20 minute hearing and neither did he provide any evidence for this hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified that the Application and the Hearing Package was served to the Tenant by registered mail to the rental unit on June 24, 2017. The Landlord provided a copy of the Canada Post tracking receipt into evidence to verify this method of service. The Landlord testified the documents had been returned back to him as unclaimed.

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 June 29, 2017 pursuant to Section 90(a) and Section 89(1) (c) of the Act.

During the hearing, the Landlord testified that he had made a clerical error in the spelling of the Tenant's last name. The Landlord provided the correct spelling pursuant to the Tenant's name as it appeared on the tenancy agreement signed by the Tenant.

Therefore, in the absence of the Tenant at this hearing, I amended the Landlord's Application to allow the correct spelling of the Tenant's last name pursuant to my authority under Section 64(3) (c) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession to end the tenancy?
- Is the Landlord entitled to a Monetary Order for unpaid rent for May to August 2017?
- 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 in November 2016 on a month to month basis. The Landlord testified that a signed tenancy agreement was completed which established that rent is payable by the Tenant in the amount of \$950.00 on the 15th day of each month. The Tenant paid a security deposit of \$500.00 on November 15, 2016 which the Landlord still retains in trust.

The Landlord testified that the Tenant failed to pay rent on May 15, 2017 in the amount of \$950.00. 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 June 8, 2017. The 10 Day Notice was provided into evidence and has a vacancy date of June 29, 2017. The witness testified that he saw the Landlord serving the 10 Day Notice on the door of the rental unit.

The Landlord testified that the Tenant was also served a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on May 1, 2017 for repeatedly late payment of rent. The 1 Month Notice was provided into evidence and states a vacancy date of June 1, 2017. This was also served to the Tenant's door which was verified by the Landlord's witness at the hearing.

The Landlord testified that the Tenant has also failed to pay rent for June, July and August 2017. As a result, the Landlord now seeks to end the tenancy and for the Tenant to pay the rental arrears in the amount of \$3,800.00.

Analysis

I first turn my mind to the 10 Day Notice. Section 26(1) of Act requires a tenant to pay rent when it is due in accordance with their tenancy agreement whether or not the landlord complies with the Act. Section 46(1) of the Act allows a landlord to end the tenancy for unpaid rent by issuing the Tenant with a 10 Day Notice.

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 in order to render it of no effect; 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 on the 10 Day Notice.

Having examined the copy of the 10 Day Notice provided into evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed evidence, along with the witness evidence, that the 10 Day Notice was served to the Tenant by attaching it to the rental unit door on June 8, 2017 in accordance with Section 88(g) of the Act.

As the 10 Day Notice was posted, I find that in accordance with Section 90(c) of the Act, it is deemed to be received by the Tenant three days later, namely on June 11, 2017.

There is no evidence before me that the Tenant paid the outstanding rent on the 10 Day Notice or made an Application to dispute it within the five day statutory time limit. Therefore, I am only able to conclude that 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 still occupying the rental unit without paying rent, I find the Landlord is now are 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 1 Month Notice as this is now a moot issue.

In relation to the Landlord's monetary claim for unpaid rent, I accept the Landlord's undisputed evidence that the Tenant has failed to pay rent for the months of May, June, July and August 2017. Therefore the Landlord is awarded \$3,800.00 in unpaid rent.

As the Landlord has been successful in this Application, pursuant to Section 72(1) of the Act, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee for the cost of this Application.

Therefore, the total amount payable by the Tenant to the Landlord is \$3,900.00 $((\$950.00 \times 4) + \$100.00)$. As the Landlord already holds the Tenant's \$500.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act.

Accordingly, the Landlord is issued with a Monetary Order for the outstanding balance of \$3,400.00 $(\$3,900.00 - \$500.00)$. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court as an order of that court if the Tenant fails to make payment.

Copies of the above orders are attached to the Landlord's copy of this Decision. The Tenant should note that the Landlord is able to recover costs associated with the enforcement of the above granted orders.

Conclusion

The Tenant has breached the Act by not paying rent. The Landlord is granted a two day Order of Possession to end the tenancy. The Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the outstanding balance of rent and the filing fee in the amount of \$3,400.00.

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: August 24, 2017

Residential Tenancy Branch