



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Supermen Property Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on September 27, 2017. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and,
- to recover the filing fee from the tenant for the cost of this application.

The Tenants did not attend the hearing. The Landlord's Agent attended the hearing and stated that she served each of the Tenants with a Notice of Hearing package, along with supporting documentary evidence. These documents were posted to the Tenants' door on August 29, 2017. Pursuant to section 89(2) of the *Act*, the Application for Dispute Resolution may only be served by posting it to the Tenant's door when the Landlord has applied under: 1) section 55 for an order of possession; 2) section 56 for an order to end the tenancy early; or, 3) section 56.1 for an order of possession because the tenancy is frustrated. Any application for dispute resolution involving a monetary claim must be served according to section 89(1) of the *Act*, as follows:

- 89** (1)(a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
 - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Given the manner in which the documents were served, I am only able to consider the request for an order of possession, and I dismiss the Landlord's claim for a monetary order for unpaid rent, with leave to reapply.

With respect to the service of the Notice of Hearing documents for the purposes of the order of possession, I find both Tenants have been sufficiently served for the purpose of this *Act*. Further, I find that they received the documents on September 1, 2017, the 3rd day after they were posted to the door of the rental unit, pursuant to Section 90 of the *Act*.

The Agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to recover the filing fee from the tenants for the cost of this application?

Background and Evidence

The Agent testified that the tenancy began on June 1, 2017. Rent in the amount of \$750.00 per month is due on the first day of each month. The Landlord holds a security deposit in the amount of \$375.00.

The Agent testified that the Tenants have not paid rent in full since June of 2017, and only paid \$400.00 in July of 2017, leaving a balance of \$350.00 that month. The Agent also testified that no rent has been paid for August or September of 2017. The Landlord also provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice), which was posted to the Tenants' door on August 3, 2017. This service was witnessed by a third party. The Notice was issued on that day for \$1,100.00 in unpaid rent, comprised of \$350.00 from July and \$750.00 for August.

The Tenants did not attend the hearing to dispute the evidence provided by the Landlord.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the Tenants owed \$1,100.00 in unpaid rent at the time the Notice was issued and attached to the door of the rental unit on August 3, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the Tenants are deemed to have received the 10 Day Notice on August 6, 2017.

The Tenants had 5 days to pay rent in full or file an application for dispute resolution. There is no evidence before me that the Tenants did either. I find the Tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the Notice, pursuant to Section 46(5). The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenants.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was successful in this hearing, I also order the tenants to repay the \$100.00 fee the landlord paid to make the application for dispute resolution. I find the landlord is entitled to a monetary order in the amount of \$100.00.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order for **\$100.00** to allow for repayment of the filing fee. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 28, 2017

Residential Tenancy Branch