



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of telephone conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on July 18, 2017 requesting an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenant's security and pet damage deposits, and to recover the filing fee from the Tenant.

Preliminary Issues

An agent for the Landlord appeared for the scheduled hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. However, there was no appearance for the Tenant during the five minute hearing or any submission of evidence by the Tenant prior to this hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord's agent testified that a copy of the Application and the Hearing Package, was served to the Tenant by registered mail to the rental unit address on July 28, 2017. The Landlord's agent testified that the documents were returned to her as unclaimed shortly thereafter. The Landlord provided the Canada Post tracking number into evidence to verify this method of service.

Section 90(a) of the *Residential Tenancy Act* (the "Act") provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service by failure or neglect to pick up mail. Therefore, based on the undisputed evidence before me, I find the Tenant is deemed to have received the documents for this hearing on August 2, 2017 pursuant to Section 89(1) (c) of the Act. The hearing continued to hear the undisputed evidence of the Landlord as follows.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?

3. Is the Landlord entitled to retain the Tenant's security and pet damage deposits in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord's agent testified that this tenancy started on January 1, 2016. The monthly rent payable under the signed tenancy agreement is \$975.00 on the first day of each month. At the start of the tenancy the Tenant paid a security deposit of \$487.00 and a pet damage deposit of \$487.00, both of which are herein referred to as the Deposits.

The Landlord's agent testified that the Tenant's rent cheques prior to July 2017 had been returned back as having insufficient funds. The Landlord provided documentary evidence to support the returned rent payments.

As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on July 5, 2017. The 10 Day Notice was provided into evidence and shows a vacancy date of July 15, 2017 due to \$1,865.00 in unpaid rent that was due on July 1, 2017.

The Landlord's agent testified that the Tenant had not paid the rental arrears and also owes for August 2017 rent, for a total amount of \$2,840.00 as claimed. The Landlord's agent testified that although it appears the Tenant has abandoned the rental unit, the Landlord still seeks the Order of Possession to end the tenancy just in case the Tenant returns to the rental unit.

Analysis

Section 26(1) of Act requires a tenant to pay rent when 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 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.

I find the contents of the 10 Day Notice on the approved form comply with the requirements of Section 52 of the Act. I accept the evidence before me that the Landlord served the Tenant with the 10 Day Notice on July 5, 2017. There is no evidence before me that the Tenant has paid the outstanding rental arrears or applied to dispute the 10 Day Notice. Therefore, the Landlord is entitled to an Order of Possession to end the tenancy.

As the vacancy date on the 10 Day Notice has now passed and the Tenant is still in rental arrears, I find the Landlord is entitled to an Order of Possession effective two days after service

on the Tenant. This order must be served on the Tenant and may be filed and enforced in the Supreme Court of British Columbia as an order of that court.

I accept the undisputed evidence the Tenant is in rental arrears for this tenancy in the amount of \$2,840.00 and award this amount to the Landlord. As the Landlord has been successful in this matter, the Landlord is also entitled to recover the \$100.00 Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$2,940.00.

As the Landlord has been holding the Tenant's \$974.00 Deposits in trust, pursuant to Section 72(2) (b) of the Act, I order the Landlord to retain this amount in partial satisfaction of the claim awarded. As a result, the Landlord is granted a Monetary Order for the remaining balance of \$1,966.00. This order must be served on the Tenant and may then be enforced 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 for service and enforcement are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by the Landlord.

Conclusion

The Tenant failed to pay rent. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenant.

The Landlord is allowed to keep the Tenant's Deposits and is issued with a Monetary Order for the remaining balance of \$1,966.00.

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: September 12, 2017

Residential Tenancy Branch