



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for an Order of Possession and a Monetary Order for unpaid rent or utilities, recovery of the filing fee, and money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenants did not attend. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondents must be served with a copy of the Application and Notice of Hearing. As the Tenants did not attend the hearing, I confirmed service of documents as explained below.

The Landlord testified that the Application, Notice of Hearing, and copies of their evidence were sent individually to each of the Tenants by registered mail on September 19, 2017, and provided copies of the registered mail receipts in the evidence before me. As a result, I find that the Tenants were deemed served these documents on September 24, 2017, five days after they were sent by registered mail.

At the request of the Landlord, copies of the decision and any applicable Orders will be mailed to the address listed for them on their Application.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for rent, the recovery of the filing fee, and for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, pursuant to sections 67 and 72 of the *Act*?

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the month to month tenancy began May 1, 2012, at a monthly rent of \$850.00, and that rent is due on the first day of each month. The Landlord testified that the current rent is now \$900.00 a month.

The Landlord testified that when the Tenants failed to pay rent as required on September 1, 2017, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was served. The 10 Day Notice in the documentary evidence before me, dated September 7, 2017, has an effective vacancy date of September 17, 2017, and indicates that on September 1, 2017, the Tenants failed to pay rent in the amount of \$900.00. The Landlord testified that the 10 Day Notice was personally served on the Tenants on September 7, 2017.

The Landlord testified that the Tenants are still living in the rental unit and that on October 29, 2017, they paid \$1,000.00 for use and occupancy of the rental unit only. In support of this testimony, the Landlord submitted a copy of a rent receipt issued to the Tenants for use and occupancy only on October 29, 2017. The Landlord stated that as of the date of the hearing, the Tenants owe \$1,700.00 in outstanding rent for October and November, 2017.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenants were personally served with the 10 Day Notice on September 7, 2017. I also find that the Tenants were obligated to pay the monthly rent of \$900.00 on time and in full each month.

As there is no evidence before me to the contrary, I find that the Tenants have failed to pay the rent owed in full as outlined above within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

Based on the foregoing, I find that the Tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, September 17, 2017, and the Landlord is therefore entitled to an Order of Possession.

I also accept the Landlord's undisputed testimony that as of the date of the hearing, the Tenants owed \$1,700.00 in outstanding rent. Pursuant to sections 67 and 72 of the *Act*, I therefore find that the Landlord is entitled to a Monetary Order in the amount of \$1,800.00; \$1,700.00 in unpaid rent, plus \$100.00 for the recovery of the filing fee.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,800.00. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: November 23, 2017

Residential Tenancy Branch