



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the Residential Tenancy Act (the “Act”), seeking a Monetary Order for unpaid rent and recovery of the filing fee, retention of the Tenant’s security deposit, and an Order of Possession.

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 these documents as explained below.

The Landlord testified that the Application and Notice of Hearing were sent to the Tenants on October 27, 2017, by registered mail. The Landlord also testified that the Tenants verbally acknowledged receiving it a few days later. As a result, I find that the Tenants were deemed served the Application and Notice of Hearing on November 1, 2017, five days after they were sent to the Tenants by registered mail.

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. At the request of the Landlord, a copy of the Decision and any applicable Orders will be made available for pick-up at the Residential Tenancy Branch (the “Branch”) or a Service BC location.

Preliminary matters

In the hearing the Landlord testified that the Tenants continue to occupy the rental unit and that additional rent is now owed. The Landlord requested to amend the Application to include loss of rent for November and December, 2017. The Rules of Procedure state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be

anticipated, such as when the amount of rent owing has increased since the time the Application was made. As a result, I have amended the Application to include outstanding rent for November and December, 2017.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the Landlord entitled to a Monetary Order and to retain the security deposit paid by the Tenants as compensation for unpaid rent and recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the tenancy began on March 15, 2017, and that rent in the amount of \$640.00 is due on the 15th day of each month. The tenancy agreement also indicates that a \$320.00 security deposit was paid by the Tenants, which the Landlord testified they still hold. The Landlord testified that when the rent was not paid as required on October 15, 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 October 16, 2017, has an effective vacancy date of October 26, 2017, and indicates that the Tenants owe \$640.00 in rent which was due on October 15, 2017. The Landlord testified that the 10 Day Notice was personally served on the Tenants on October 16, 2017.

The Landlord testified that the Tenants paid \$640.00 on October 28, 2017, and that no further rent has been paid since that date. As a result, the Landlord stated that the Tenants currently owe \$1,280.00 in outstanding rent.

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 served with the 10 Day Notice on October 16, 2017, the date it was personally served on them. I also find that the Tenants were obligated to pay the monthly rent of \$640.00, on time and in full each month.

Although the Landlord testified that the Tenants have now paid the \$640.00 owing for October, as this payment was not made until October 28, 2017, and the Tenants were personally served the 10 Day Notice on October 16, 2017, I find that the Tenants failed to pay the rent owed in full as outlined above within the five (5) days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five (5) 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, October 26, 2017, and the Landlord is therefore entitled to an Order of Possession.

Based on the documentary evidence and testimony before me, I find that the Tenants owe the Landlord \$1,280.00 in outstanding rent for November and December, 2017. Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to the recovery of the \$100.00 filing fee and to retain, in full, the \$320.00 security deposit paid by the Tenants, in partial recovery of the above noted debts. As a result, I find that the Landlord is entitled to a Monetary Order in the amount of \$1,060.00, the amount owing as of today's date for unpaid rent and recovery of the filing fee, less the security deposit paid by the Tenants.

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 \$1,060.00. 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: January 15, 2018

Residential Tenancy Branch