



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, OPR

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order and retention of the security deposit for unpaid rent and recovery of the filing fee, as well as 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, Notice of Hearing and the documentary evidence they intended to rely on in the hearing was sent individually to each of the Tenants by registered mail on November 29, 2017. As a result, I find that the Tenants were deemed served on with the above noted documents on December 4, 2017, five days after they were sent by registered mail.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the Landlord, the decision will be picked-up in person.

Preliminary matters

At the outset of the hearing I identified that I did not have a completely legible copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) in the documentary

evidence before me. I advised the Landlord to re-submit a copy to the Residential Tenancy Branch (the "Branch") by 4:30 P.M. on the date of the hearing and accepted affirmed testimony regarding the form and contents of the 10 Day Notice in the hearing. As a copy of the 10 Day Notice was received within the timeframe noted above, and it matched the testimony provide din the hearing,I accepted it for consideration in this matter.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order and retention of the security deposit pursuant to sections 67 and 72 of the *Act*?

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

Background and Evidence

The Landlord testified that the tenancy began in March of 2017, and that rent in the amount of \$700.00 is due on the first day of each month. The Landlord testified that when the Tenants failed to pay the rent for October and November of 2017, a 10 Day Notice was posted to the door of their rental unit on November 20, 2017.

The 10 Day Notice in the documentary evidence before me, dated November 20, 2017, has an effective vacancy date of November 30, 2017, and states that as of November 1, 2017, the Tenants owed \$1,400.00 in outstanding rent.

The Landlord stated that since the 10 Day Notice was served, the Tenants have not paid any further rent and currently owe \$3,500.00 in outstanding rent for October, November, and December of 2017, and January and February of 2018.

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 sections 88 and 90 of the *Act*, I find that the Tenants were deemed served with the 10 Day Notice on November 23, 2017, three days after it was attached to the door of their rental unit. As the Tenants were deemed served on November 23, 2017, I find that the effective date of the 10 Day Notice, November 30, 2017, is incorrect as it does not comply with the required notice period. However, pursuant to section 53 of the *Act*, I find that the incorrect effective date is automatically corrected to December 4, 2017, in compliance with the required notice period. I also find that the Tenants were obligated to pay the monthly rent of \$700.00, on time and in full each month.

As there is no evidence before me to the contrary, I find that the Tenants 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 corrected effective date of the 10 Day Notice, December 3, 2017, and the Landlord is therefore entitled to an Order of Possession. As the corrected effective date of the 10 Day Notice has passed and the Tenants have not paid rent for the current month, the Order of Possession will be effective two days after service on the Tenants.

Based on the testimony and documentary evidence before me, I am also satisfied that the Tenants owe \$3,500.00 in outstanding rent. Pursuant to section 72 of the *Act*, I find that the Landlord is entitled to the recovery of the \$100.00 filing fee and to retain the \$350.00 security deposit paid by the Tenants in partial satisfaction of the above owed debt. As a result, the Landlord is therefore entitled to a Monetary Order in the amount of \$3,250.00; \$3,500.00 in outstanding rent, plus the cost of the \$100.00 filing fee, less the \$350.00 security deposit.

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 \$3,250.00. 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: February 9, 2018

Residential Tenancy Branch