



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 is an Application for Dispute Resolution (the “Application”) brought by the landlord requesting an Order for Possession on the basis of a 10-Day Notice to End Tenancy for Unpaid Rent, a Monetary Order for arrears in rent, an order to retain the security deposit in partial satisfaction of the Monetary Order and an order for payment of the filing fee.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:12 AM to enable the tenants to call into this teleconference hearing scheduled for 11:00 AM. The landlord attended the hearing and was represented by it's agent GZ (landlord) and building manager (CZ). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Issue(s) to be Decided

Is the landlord entitled to an Order for Possession, pursuant to section 55 of the *Residential Tenancy Act* (“Act”)?

Is the landlord entitled to a Monetary Order for the rent arrears pursuant to section 67 of the Act?

Is the landlord entitled to payment of the filing fee, pursuant to section 72 of the Act?

Is the landlord entitled to retain the security deposit in partial satisfaction of any Monetary Order?

Preliminary Matters

At the commencement of the hearing, the landlord testified that he had accepted an uncertified cheque from the tenants in the amount of \$4,170.00 four days prior to today's hearing.

The landlord testified that he was unable to confirm that at the time of the hearing whether this cheque would "go through", given the history of bounced cheques from the tenants. The landlord did not indicate whether his acceptance of the cheque would reinstate the tenancy or whether the tenants were led to believe this, though I did ask the landlord whether they were still seeking an order for possession and monetary order. The landlord confirmed that they were. The landlord also asked permission to increase their application for monetary order to include the one additional month of unpaid rent for the month of December, 2018. I have allowed the landlord's request to amend the application to include unpaid rent for October, November and December 2018, for a total of \$4,170.00 pursuant to rule 4.2 of the Residential Tenancy Branch Rules of Procedure and section 64(3)(c) of the *Act*.

Background and Evidence

The landlord gave testimony that he sent the Notice of Dispute Resolution Proceedings packages upon each of the tenants by registered mail on November 20, 2018. The landlord provided Canada Post tracking numbers for each of the packages as proof of service. I am satisfied that the landlord's dispute resolution hearing packages and written evidence have been served to the tenants in accordance with sections 88 and 89 of the *Act*.

The landlord testified that the tenancy began on April 1, 2017 as a month to month tenancy for \$1,390.00 rent due on the first day of each month, as evidenced by the written Tenancy Agreement signed by the landlord and tenants on March 20, 2017 and submitted into evidence. The landlord was given a security deposit of \$695.00 and the deposit is still being held by the landlord. Ownership of the rental unit changed sometime after the parties entered into the Tenancy Agreement and the rental unit is now managed by the named landlord. A copy of the service agreement has also been entered as evidence in these proceedings.

The landlord provided evidence of an undated 10 Day Notice (first 10 Day Notice) indicating unpaid rent in the amount of \$1,390.00 that was due on October 1, 2018.

This 10 Day Notice was posted to the tenant's door at 10:00 AM on October 16, 2018 as supported by a written Proof of Service document.

The landlord gave testimony, supported by a written Proof of Service document, that he posted a further 10 Day Notice (the 10 Day Notice) dated November 5, 2018 on the tenants' door on 11:05 a.m. on November 6, 2018.

Analysis

I have reviewed all 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 first 10 Day Notice on October 19, 2018 and the second 10 Day Notice on November 9, 2018. Although two 10 Day Notices were issued, the landlord did not proceed on the first 10 Day Notice and seeks an Order for Possession and Monetary Order based on the 10 Day Notice dated November 5, 2018 only (the 10 Day Notice).

Sections 47(4) and (5) of the *Act* state:

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not 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 by that date.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,390.00, as per the tenancy agreement. I accept the evidence before me that the tenants have failed to pay the rent owed in full 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 sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, November 19, 2018.

At the commencement of this hearing the landlord stated that they had accepted a cheque in the amount of \$4,170.00 four days prior to the hearing. As it is the landlord's onus to prove on a balance of probabilities that they should be entitled to a monetary

order for unpaid rent, I find that the landlord has not proven that at the time of the Dispute Resolution proceedings, the tenants are indebted to them for the unpaid rent. Based on this finding, I dismiss the landlord's application for a Monetary Order pursuant to section 67 of the Act with leave to reapply.

As no monetary order is being awarded at this time, the landlord's application to retain the security deposit is dismissed with leave to reapply.

As the landlord was only partially successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for the application without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 2, 2019

Residential Tenancy Branch