



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- an Order of Possession pursuant to sections 46 and 55 of the *Act* for unpaid rent or utilities;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The landlord and the landlord's agent (herein referred to as the "landlord") attended the hearing by way of conference call. The tenants did not attend this hearing, although I waited until 11:10 AM in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 AM. The landlord and landlord's agent attending the hearing were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that on January 15, 2019, the tenants were served the landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package"), and the landlord's evidence, by way of posting it to the door of the rental unit.

Based on the testimony of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the dispute resolution hearing package and the landlord's evidence on January 18, 2019, three days after their posting.

Preliminary Issue – Amendment of Landlord's Application

At the time the landlord's application was submitted, the landlord sought compensation for unpaid rent and unpaid utilities. At the onset of the hearing, the landlord provided that an amendment form to amend the landlord's application was submitted. The landlord testified that the amendment form was served to the tenants.

The landlord clarified that pursuant to the amendment form, the landlord seeks a monetary order only for unpaid rent, in the amount of \$3,000.00, comprised of the balance of unpaid rent owed in the amount of \$1,000.00 for each of the months encompassing the period of November 2018 to January 2019. Accordingly, I amend the landlord's application to reflect the foregoing pursuant to section 64(3)(c) of the *Act* and in accordance with rule 4.2 of the Residential Tenancy Branch Rules of Procedure.

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 monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below. The landlord provided undisputed evidence at this hearing, as the tenant did not attend.

The landlord testified that he was not certain whether a tenancy agreement was signed by the original landlord and tenants. The landlord gave evidence that he is not aware when the tenancy in question began, as, in April 2018, he purchased the home in which

the rental unit is located. The landlord provided that the tenancy was already in place at that time, and that he inherited the tenancy from the previous landlord.

The landlord testified that the current monthly rent is \$1,000.00 per month, which is due on the first day of each month. The landlord provided that a security deposit in the amount of \$500.00 was provided by the tenants at the start of the tenancy, and that amount continues to be held by the landlord.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), dated January 03, 2019 was served to the tenants on January 03, 2019 by way of posting it to the door of the rental unit.

The landlord provided as evidence a copy of a "Proof of Service of the Notice" form showing that the landlord served the Notice to the tenants by way of posting it to the door of the rental unit on January 03, 2019. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are included on the form.

The Notice alerted the tenants to unpaid rent owed in the amount of \$3,600.00, which was due on December 31, 2018, and provided an effective vacancy date of January 13, 2019. The landlord provided testimony to state that he had subsequent conversations with the tenants to clarify that the sum of \$3,600.00 was owed by January 01, 2018.

The landlord submitted into evidence a copy of a Monetary Order Worksheet which indicated the tenants have failed to pay rent in the amount of \$1,000.00 for each of the months of November 2018, December 2018, and January 2019, which resulted in total rental arrears in the amount of \$3,000.00. By way of oral testimony, the landlord confirmed the information provided on the Monetary Order Worksheet. The landlord seeks a Monetary Order in the amount of \$3,000.00 for unpaid rent.

The landlord testified that the tenants have not provided any payment toward the rent owed. The landlord testified that the tenants may have vacated the rental unit, as there was indication of the tenants moving out of the rental unit. However, the landlord stated that individuals other than the tenants may have gained access to the rental unit, either by obtaining access through the tenants, or by accessing the rental unit as squatters or individuals unlawfully obtaining access by some other method. Therefore, the landlord is seeking an Order of Possession.

Additionally, the landlord wishes to recover the filing fee, in the amount of \$100.00, for this application from the tenant.

Analysis

In accordance with sections 88 and 90 of the *Act*, I find that the tenants are deemed to have received the Notice on January 06, 2019, three days after its posting.

Pursuant to section 46 of the *Act*, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

Subsection 26(1) of the *Act* sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

I accept the uncontested testimony provided by the landlord, which depicts that the tenants were not permitted to withhold any portion of the monthly rent owed at any time during the tenancy, either in accordance with the *Act* or by mutual agreement between the parties.

Based on the testimony provided by the landlord, I find that the tenants failed to pay the unpaid rent within five days of receiving the 10 Day Notice. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of his tenancy on the corrected effective date of the Notice, January 16, 2019.

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 Notice, January 16, 2019. Therefore, this required the tenants and anyone on the premises to vacate the premises by January 16, 2019. As this has not occurred, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*, as the 10 Day Notice complies with section 52 of the *Act*.

Therefore, I grant the landlord an Order of Possession based on the January 03, 2019 Notice served to the tenants for unpaid rent.

The landlord provided undisputed testimony and evidence demonstrating that the tenant did not provide full payment of rent owed in the amount of \$3,000.00 for the months encompassing the period of November 2018 to January 2019, thereby resulting in rental arrears as set out above. However, with respect to the landlord's request for a monetary order, I note that section 89 of the *Act* provides information with respect to the service of an application for dispute resolution. Section 89 reads, in part, as follows:

Special rules for certain documents

- 89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a) by leaving a copy with the person;
 - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
 - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:
- (a) by leaving a copy with the tenant;
 - (b) by sending a copy by registered mail to the address at which the tenant resides;
 - (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
 - (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

Section 89(2) of the *Act* does allow for the application for dispute resolution to be attached to the door of the rental unit only when considering the issuance of an Order of Possession for the landlord. As the landlord served the application for dispute resolution in accordance with section 89(2)(d) of the *Act*, I have leave to hear only that part of the landlord's application that asks for an Order of Possession. I do not have leave to hear the landlord's application for a monetary Order or request to recover the \$100.00 filing fee paid for this application. Therefore, I dismiss the landlord's application for a monetary Order with leave to reapply, and dismiss the landlord's request to recover the \$100.00 filing fee paid for this 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. 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.

I dismiss the landlord's application for a monetary Order with leave to reapply.

I dismiss the landlord's request to recover the \$100.00 filing fee paid for this application without leave to reapply.

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 20, 2019

Residential Tenancy Branch