



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNRL, CNR, FFL, FFT

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on March 17, 2019 the Application for Dispute Resolution, the Notice of Hearing and all documents the Landlord submitted to the Residential Tenancy Branch in regards to this matter were sent to the rental unit for each Tenant, via registered mail. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenants did not appear at the hearing.

The Tenants filed an Application for Dispute Resolution in which they applied to set aside a Notice to End Tenancy for Unpaid Rent and to recover the fee for filing this Application for Dispute Resolution. The Landlord stated that he received a copy of the Tenants' Application for Dispute Resolution.

Preliminary Matter

The Agent for the Landlord applied to amend the Application for Dispute Resolution to include unpaid rent from April of 2019. I find that it was reasonable for the Tenants to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was

filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent or utilities?

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Background and Evidence

The Landlord stated that:

- this tenancy began on February 01, 2019;
- the Tenants agreed to pay rent of \$2,500.00 by the first day of each month;
- the Tenants are still living in the rental unit;
- the rent cheque the Tenants provided for February 01, 2019 was returned due to insufficient funds;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of March 19, 2019, was posted on the door of the rental unit on March 09, 2019;
- April 12, 2017; and
- the Ten Day Notice to End Tenancy declared that the Tenants owed \$4,500.00 in rent that was due on March 01, 2019.

The Agent for the Landlord stated that:

- the Tenants have only paid \$500.00 in rent for February of 2019; and
- the Tenants have paid no rent for March or April of 2019.

Analysis

On the basis of the undisputed evidence I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$2,500.00 by the first day of each month and that the Tenants still owe \$2,000.00 in rent for February of 2019, \$2,500.00 in rent for March of 2019; and \$2,500.00 for April of 2019. As the Tenants are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$7,000.00 in outstanding rent to the Landlord.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed

evidence I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on March 09, 2019.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on March 11, 2019.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on March 11, 2019 I find that the earliest effective date of the Notice was March 21, 2019.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Ten Day Notice to End Tenancy was March 21, 2019.

As the Landlord had the right to end this tenancy on the basis of unpaid rent, I grant the Landlord's application for an Order of Possession and I dismiss the Tenants' application to cancel the Ten Day Notice to End Tenancy that is the subject of this dispute.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing an Application for Dispute Resolution.

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I therefore dismiss their application to recover the fee for filing an Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$7,100.00, which includes \$7,000.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$7,100.00. In the event that the Tenants do not comply

with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Tenants' Application for Dispute Resolution is dismissed, 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 *Act*.

Dated: April 29, 2019

Residential Tenancy Branch