



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was made on April 1, 2019, and adjourned to a participatory hearing. This hearing was convened pursuant to the Landlord's Application seeking the following relief, pursuant to the *Residential Tenancy Act (the "Act")*:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- the return of the filing fee.

The hearing was scheduled for 9:30pm on May 24, 2019 as a teleconference hearing. The Landlord appeared at the appointed date and time of the hearing and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 16 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only persons who had called into this teleconference.

The Landlord testified the Application, the amendment, and documentary evidence package were served to the Tenants by registered mail on April 11, 2019. Copies of the Canada Post registered mail receipts were submitted confirming the mailings took place on April 11, 2019. Based on the oral and written submissions of the Landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application, amendment, and documentary evidence on April 16, 2019, the fifth day after their registered mailings.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord made an amendment to his Application on April 11, 2019 to increase the monetary amount to \$9,750.00 relating to unpaid rent for February, March, April, May and June 2019.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on August 15, 2017. Rent in the amount of \$1,950.00 per month is due to the Landlord on the last day of each month. The Tenants paid a security deposit in the amount of \$1,000.00, which the Landlord holds.

The Landlord testified the Tenants did not pay rent when due in February or March 2019. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 17, 2019 (the "10 Day Notice") with an effective vacancy date of March 30, 2019. At that time, rent in the amount of \$3,900.00 was outstanding. The Landlord testified he served the 10 Day Notice to the Tenants by registered mail on March 18, 2019.

In addition, the Landlord testified that the Tenants also failed to pay rent when due for April and May 2019. The Landlord stated that currently, rent in the amount of \$7,800.00 is outstanding, and the Tenants continue to occupy the rental unit.

The Landlord stated that he is also claiming for June 2019 rent as he was uncertain as to when the hearing would take place. The Landlord agreed to withdraw his claim for June 2019 rent during the hearing as this rent was not yet due to the Landlord at the time of the hearing.

As noted above, the Tenants did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act states that a Tenants must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the *Act* states 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.

The Landlord served the Tenant with a the 10 Day Notice dated March 17, 2019 with an effective vacancy date of March 30, 2019, by registered mail on March 18, 2019. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. I find the Tenants are deemed to have received the 10 Day Notice on March 23, 2019.

Section 46(4) says that within 5 days after receiving a notice under this section, the Tenants may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenants had until March 28, 2019 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept the Landlord's undisputed testimony that after service of the 10 Day Notice, the Tenants have made no payments towards the amount of unpaid rent. As the Tenants did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenants disputed the 10 Day Notice, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, April 2, 2019, pursuant to section 46(5) of the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$7,800.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$6,900.00, which has been calculated as follows:

| Claim | Amount |
|-------------------------------|-------------------|
| Unpaid rent: | \$7,800.00 |
| Filing fee: | \$100.00 |
| <i>LESS</i> security deposit: | -(\$1,000.00) |
| TOTAL: | \$6,900.00 |

Conclusion

The Tenants have breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. If the Tenants fail to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$6,900.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 24, 2019

Residential Tenancy Branch