



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord (“Application”) for an order of possession, for a monetary order for unpaid rent or utilities, for an order to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee from the Tenants.

The Landlord’s agent, F.J., (“Agent”) attended the hearing, but the Tenants did not; I, therefore, considered service of the Application and documentary evidence by the Landlord on the Tenants below.

The Agent gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing, and to ask questions.

Preliminary and Procedural Matters

The Agent provided her email address at the outset of the hearing and confirmed her understanding that the decision would be emailed to both Parties.

The Residential Tenancy Branch Rule of Procedure 3.1 states that each respondent must be served with a copy of the Application and documentary evidence. The Agent said the Application and documentary evidence were served on each Tenant by mailing each of them two sets of registered mail packages. The first package was mailed to each Tenant on April 12, 2019, and a second package was mailed to each on May 8, 2019. The Landlord provided Canada Post tracking numbers as evidence.

Section 90 of the Act determines that a document sent by registered mail is deemed to have been served five days later. I, therefore, find that the Tenants were each duly served with the Application and documentary evidence in accordance with the Act on April 17, 2019 and May 13, 2019.

Issues to be Decided

- Is the Landlord entitled to an order of possession for unpaid rent?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to recover the cost of the filing fee for this Application?

Background and Evidence

The Agent submitted a copy of a tenancy agreement signed by the Parties on February 8 and 9, 2019, respectively, indicating that the fixed term tenancy began on February 15, 2019. The tenancy agreement sets out a monthly rent of \$2,500.00, due on the 15th day of each month. It also states that the Tenants will pay two-thirds of the utility bills for the rental unit, specifically, water and electricity.

The Agent said that on February 8, 2019, the Tenants paid \$1,250.00 in rent for the remainder of February 2019, and a security deposit of \$1,250.00. The Agent said that later in February the Tenant, C.H., asked if she could pay rent on the first of each month, rather than the 15th, as is set out in the tenancy agreement. The Agent said the Landlord agreed to this, but that the Tenants did not pay any rent or utilities after February 8, 2019.

The Agent said she served the Tenants in person with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities ("Notice") on March 13, 2019. The Notice informed the Tenants that it would be cancelled if the rent was paid within five days. The Notice also explained that the Tenants had five days to dispute the Notice.

The Notice:

- was signed and dated by the Landlord,
- gives the address of the rental unit,
- states the effective date of the Notice as March 23, 2019,
- states the ground(s) for ending the tenancy, and
- was in the approved form.

The Landlord applied for dispute resolution on April 9, 2019. The Agent said she served the Tenants with the gas bill as part of the Application and documentary evidence on April 12, 2019 requiring them to pay two-thirds of \$186.34. The Agent said she served the electricity bill to the Tenants via registered mail as part of a second set of documentary evidence served to each Tenant on May 13, 2019. The Agent provided Canada Post tracking numbers as evidence of this service.

Analysis

Based on the above, the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

I accept that the Parties orally agreed to vary the payment date for rent to the first day of the month. I find that the Tenants were served with the Notice on March 13, 2019. I find that the Notice complies with section 52 of the Act in terms of form and content. I find that the Tenants did not pay any rent for March through May 2019, and they did not apply to dispute the Notice. As such, I find they are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice: March 23, 2019. I, therefore, find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service of the order on the Tenants.

I find that the Landlord has established a total monetary claim of **\$7,600.00** comprised of three months of unpaid rent of \$2,500.00 per month, and I award the Landlord the \$100.00 filing fee paid for this Application.

In terms of the utilities claimed by the Landlord, I find that the Agent did not comply with section 46(6) of the Act, which states:

Landlord's notice: non-payment of rent

46 (6) If

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The Agent said she served the Tenants with a copy of the utility bills at the same time she served the Notice; however, pursuant to section 46(6), she should have waited to serve the Notice until the utilities had remained unpaid for 30 days after a demand for payment was given to the Tenants. I, therefore, dismiss this claim with leave to reapply.

The Landlord continues to hold the Tenants' security deposit of \$1,250.00, and has requested to retain this deposit in satisfaction of the claims for unpaid rent. No interest is payable on the deposit during this tenancy.

In summary, I find that the Landlord is entitled to an order of possession and a monetary order for unpaid rent and recovery of the filing fee in the total amount of \$7,600.00.

In accordance with the set off provisions of section 72 of the Act, I set off the compensation owed by the Tenants to the Landlord against the \$1,250.00 security deposit held by the

Landlord. After set off, the Tenants are left owing the Landlord \$6,360.00. The Landlord is also awarded an order of possession two days after service of the order on the Tenants.

Conclusion

The Tenants failed to pay rent and did not file to dispute the eviction Notice. The Tenants are, therefore, presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

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.

I grant a monetary order for the \$7,500.00 rent owed by the Tenants to the Landlord, plus recovery of the Application filing fee, less the \$1,250.00 in security deposit set off, for a total of **\$6,360.00**. This Monetary Order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 31, 2019

Residential Tenancy Branch