



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

The landlord seeks an order of possession for unpaid rent, a monetary order for unpaid rent, and a monetary order for recovery of the filing fee, pursuant to sections 46, 55, 67, and 72, respectively, of the *Residential Tenancy Act* (the “Act”).

The landlord applied for dispute resolution on March 15, 2019 and a dispute resolution hearing was held on May 6, 2019. The landlord attended the hearing, was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenants did not attend.

The landlord testified that he served the Notice of Dispute Resolution Proceeding package (the “package”) by registered mail on March 15, 2019. He provided a copy of the Canada Post Registered Mail receipt and tracking number. The Canada Post registered mail tracking website indicated that the tenants did not claim the package. Pursuant to section 90 of the Act, the tenants were deemed to have received the package on March 20, 2019. Refusing or failing to pick up mail does not nullify the deeming provisions of the Act.

Given the above, I find that the landlord served the package in compliance with section 89 of the Act.

I have reviewed and considered evidence submitted that met the requirements of the *Rules of Procedure*, and to which I was referred, but I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Issues

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to a monetary order for the filing fee?

Background and Evidence

The landlord testified that the tenancy began approximately two years ago and that monthly rent, which is due on the first of the month, is \$1,000.00. The tenants paid a security deposit of \$300.00. There is no pet damage deposit. I note that there was no written tenancy agreement submitted into evidence.

On March 4, 2019, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) for overdue rent owing in the amount of \$1,000.00. The Notice was served by registered mail on March 4, 2019; a copy of the receipt and tracking number were submitted into evidence.

The tenants eventually paid \$300.00 of March’s rent on March 17, 2019, and the balance of \$700.00 on March 20, 2019. They then paid the rent—late—for April 2019 on April 8, 2019. Copies of receipts issued by the landlord for the above-noted amounts were submitted into evidence.

As for the rent for May 2019, the landlord testified that the tenants have not paid anything. The tenants currently owe the landlord \$1,000.00 in unpaid rent for May 2019.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The landlord claims that the tenants did not pay rent when it was due and have not paid rent for May 2019.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of

the rent. Pursuant to section 46(4) of the Act, the Notice informed the tenants that the Notice would be cancelled if they paid rent within five days of service. The Notice also explains that the tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

Based on the evidence, I find that the tenants did not pay the full rent within five days of service of the Notice and they did not file an application for dispute resolution. Further, there is no evidence before me to find that the tenants had a right under the Act to not pay the full rent on time. Nor, I find, have they paid rent for May 2019.

Section 46(5) of the Act states the following:

- (5) If a tenant who has received a notice under this section does not pay the rent or 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 to which the notice relates by that date.

In this case, the Notice was sent by registered mail, and is presumed to have been received by the tenants on the fifth day after it was mailed, as per section 90 of the Act. The tenants did not pay rent or make an application for dispute resolution within 5 days after receiving the notice. As such, as per section 46(5) of the Act, I find the tenants are conclusively presumed to have accepted that the tenancy ended on March 16, 2019.

Given the above, and pursuant to section 55(4)(a) of the Act, I grant the landlord an order of possession of the rental unit.

Further, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim for unpaid rent in the amount of \$1,000.00.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A

successful party is generally entitled to recovery of the filing fee. As the applicant was successful I grant his claim for reimbursement of the filing fee in the amount of \$100.00.

A total monetary award of \$1,100.00 for the landlord therefore is calculated as follows:

CLAIM	AMOUNT
Unpaid rent	\$1,000.00
Filing fee	\$100.00
<i>LESS</i> security deposit	(\$300.00)
Total:	\$800.00

I order that the landlord retain the tenants' full security deposit in the amount of \$300.00 in partial satisfaction of the monetary award. A monetary order of \$800.00 for the balance of this award is issued in conjunction with this decision.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenants and is effective two days (48 hours) from the date of service. **This order may be enforced in the Supreme Court of British Columbia.**

I hereby grant the landlord a monetary order in the amount of \$800.00, which must be served on the tenants. **The order may be enforced in the Provincial Court of British Columbia.**

This decision is final and binding, except whereas permitted by 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 Act.

Dated: May 7, 2019

Residential Tenancy Branch