



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANCHO MANAGEMENT SERVICES BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on October 23, 2019, in which the Landlord requested an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on October 7, 2019 (the "Notice"), authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing of the Landlord's application was scheduled for 11:00 a.m. on December 13, 2019. Only the Landlord's Agent, C.G., called into the hearing. She gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:22 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Agent and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Agent testified that they served the Tenant with the Notice of Hearing and the Application on October 28, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

The Canada Post tracking information confirmed that the package was retrieved by the Tenant on November 1, 2019. As such, I find the Tenant was duly served as of November 1, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically reference by the Landlord's Agent and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession and monetary compensation based on the Notice?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Should the Tenant recover the filing fee?

Background and Evidence

The tenancy agreement was provided in evidence and which confirmed that this tenancy began August 15, 2019. Monthly rent was payable in the amount of \$1,180.00 (including \$30.00 for parking) and the Tenant paid a security deposit in the amount of \$575.00 and a pet damage deposit in the amount of \$575.00.

The Agent confirmed that the Tenant's September cheque bounced following which the Tenant received a 10 Day Notice and paid the outstanding rent.

The Agent also testified that the October rent cheque also bounced, following which the Landlord issued the Notice which is the subject of the current Application. The Agent confirmed that the Notice was posted to the rental unit door on October 7, 2019. The Agent confirmed the Tenant did not apply to dispute the Notice, nor did she pay the outstanding rent.

The Agent further stated that the November rent was paid, but December also bounced such that the Tenant owes for two months (October and December 2019) in the amount of \$2,360.00.

The Landlord also sought authority to retain the Tenant's security and pet damage deposits towards the amounts awarded.

Analysis

The Landlord issued the Notice pursuant to Section 46 of the *Act* which provides as follows:

Landlord's notice: non-payment of rent

46 (1)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.

(2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4)Within 5 days after receiving a notice under this section, the tenant may

(a)pay the overdue rent, in which case the notice has no effect, or

(b)dispute the notice by making an application for dispute resolution.

(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.

(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.

Based on the Landlord's Agent's undisputed testimony and evidence before me, and on a balance of probabilities, I find as follows.

I find that the Tenant failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act*. I accept the Landlord's testimony that they served the Notice on the Tenant on October 7, 2019. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later. Accordingly, I find pursuant to section 88, that the Tenant was served with the Notice as of October 10, 2019.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, October 15, 2019. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

I find that the Tenant did not pay the outstanding rent and did not apply to dispute the Notice within the five days required by section 46(4) and is therefore conclusively presumed pursuant to 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 find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I also find that the Landlord has established a total monetary claim of \$2,460.00 comprised of unpaid rent and parking for October and December 2019 and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord retain the Tenant's security and pet damage deposit of \$1,150.00 in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$1,310.00**. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the Tenant's security and pet damage deposit in partial satisfaction of the claim, and is granted a Monetary Order for the balance due.

This Decision is final and binding on the parties, except as 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: December 13, 2019

Residential Tenancy Branch