



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNSD

Introduction

On April 9, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession; for a monetary order for unpaid rent or utilities; a monetary order for damage; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

On March 30, 2020 the executive Director of the Residential Tenancy Branch made a Directors Order that documents given or served under section 88 and 89 of the Act are sufficiently given or served to a person using email sent to the email address of the person to whom the document is to be given or served. A document served this way is deemed to have been received three days after it was mailed.

The Landlords attended the teleconference hearing; however, the Tenants did not. The Landlords provided affirmed testimony that the Tenant was served the Notice of Dispute Resolution Proceeding using email sent on April 12, 2020. The Landlords provided a copy of the email which indicates the dispute resolution package was attached. The Landlord also provided copies of other emails the Landlords received from the Tenants. The email address the Landlord used in the April 12, 2020 email is the same address as contained in the Tenants emails.

I find that the Tenants were sufficiently served with the Notice of Dispute Resolution Proceeding in accordance with the Directors Order. The Tenants are deemed served on April 15, 2020.

The Landlords were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

The most important matter to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent. The Landlords claim for a monetary order for damage to the unit is dismissed with leave to reapply.

Issues to be Decided

- Are the Landlords entitled to an order of possession due to unpaid rent?
- Are the Landlords entitled to a monetary order to recover unpaid rent?
- Are the Landlords entitled to keep the security deposit towards unpaid rent?
- Are the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

The Landlords testified that the tenancy began in June 2015 and is currently on a month to month basis. Rent in the amount of \$900.00 is to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$450.00. The Landlords provided a copy of a tenancy agreement.

The Landlord testified that the Tenants have not paid the rent owing under the tenancy agreement for many months. The Landlords provided a spread sheet which indicates the Tenants have been in arrears for paying the rent dating back to 2016. The document indicates that the Tenants owe \$9,850.00 for unpaid rent as of April 1, 2020.

The Landlords testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 17, 2020, ("the 10 Day Notice"). The Landlord testified that the Notice was served in person on March 27, 2020.

The 10 Day Notice indicates that the Tenants have failed to pay rent in the amount of \$8,950.00 which was due on March 1, 2020. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

There is no evidence before me that the Tenants made an application to dispute the 10 Day Notice.

The Landlord testified that the Tenants are still living in the rental unit.

The Landlord requested to amend the application to include unpaid rent for May 2020 in the amount of \$900.00

The Landlord seeks an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$10,750.00.

The Landlord is seeking to keep the security deposit of \$450.00 in partial satisfaction of the claim for unpaid rent.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenants received the 10 Day Notice on March 27, 2020 and did not pay all the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice. I find that the Tenants did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession for the rental unit, pursuant to section 55 of the Act, effective two days after service on the Tenants. 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 allow the Landlords request to amend their claim to include an additional month of rent for May 2020. The Tenants are living in the rental unit and are aware that rent is due each month.

I find that the Tenants owe the Landlords \$10,750.00. for unpaid rent.

I order that the Landlord can keep the security deposit in the amount of \$450.00 in partial satisfaction of the award for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$10,850.00 comprised of \$10,750.00. in unpaid rent and the \$100.00 fee paid by the Landlords for this hearing.

After setting off the security deposit of \$450.00 towards the claim of \$10,850.00, I find that the Landlord is entitled to a monetary order in the amount of \$10,400.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants failed to pay the rent due under the tenancy agreement and did not file to dispute the 10 Day Notice. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlords are granted an order of possession under section 55 of the Act effective 2 days after service on the Tenants and I grant a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$10,400.00.

I note that on March 30, 2020 the Minister of Public Safety and Solicitor General declared a state of emergency because of the COVID -19 pandemic. The Ministerial Order provides that a Landlord must not file an order of possession in the Supreme Court of British Columbia unless the order of possession was granted under section 56 or 56.1 of the Act.

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 29, 2020

Residential Tenancy Branch