



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR-DR OPR-DR FFL

Introduction

The landlords seek an order of possession and a monetary order for unpaid rent, pursuant to sections 26, 55, and 67 of the *Residential Tenancy Act* ("Act"). In addition, they applied to recover the cost of the filing fee, pursuant to section 72 of the Act.

Preliminary Issue: Service

The landlords, along with their son, attended the hearing, but the tenant did not. In such cases where a respondent does not attend, I must be satisfied that the respondent was properly served with the Notice of Dispute Resolution Proceeding. Such service must comply with the Act and the Residential Tenancy Branch's *Rules of Procedure*, and there must be evidence to support a finding that such service in fact occurred.

The landlords and son testified under oath that they served the Notice of Dispute Resolution Proceeding by registered mail on October 26, 2021, which is a permitted method of service under section 89 of the Act. The landlords submitted into evidence documentary proof consisting of a Canada Post registered mail receipt and a registered mail tracking number proving that the tenant was served by registered mail.

Given the evidence before me, it is my finding that the tenant was appropriately served with the Notice of Dispute Resolution Proceeding and documentary evidence necessary for him to participate fully in these proceedings.

Issues

Are the landlords entitled to an order of possession and a monetary order?

Background, Evidence, and Facts

Relevant oral and documentary evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only the evidence needed to explain the decision is reproduced below.

The tenancy began on June 1, 2019. Monthly rent is \$1,850.00 and this is due on the first day of the month. The tenant paid a security deposit of \$975.00. A copy of the residential tenancy agreement was in evidence. (It is noted that there was a co-tenant at the start of the tenancy, but they vacated the rental unit in late 2020. Monthly rent at the start of the tenancy, and when there were two tenants in the property, was \$1,950.00.)

In December 2020 (when the co-tenant moved out) the tenant was not comfortable paying the full rent of \$1,850.00, so the landlords agreed to accept \$1,400.00 in rent for three months. This temporary reduction occurred in December 2020, January, and February 2021. However, the landlords brought the rent up to close to what it was at \$1,850.00. The tenant agreed to this. However, the tenant only paid \$1,400.00 in rent since then.

On August 31, 2021 the landlords served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on the tenant by registered mail. A copy of the Notice was in evidence, along with documentary evidence of the Notice being served by Canada Post registered mail. The tenant failed to pay rent for August 2021, and they did not dispute the Notice. In September, the tenant only paid \$550.00 in rent.

As of March 1, 2022, the tenant owes \$6,400.00 in rent arrears.

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.

Rent must be paid when it is due under a tenancy agreement ([section 26\(1\)](#) of the Act). A landlord may issue a notice to end the tenancy under [section 46](#) of the Act if a tenant does not pay rent on time and in full.

If a tenant does not pay the amount of rent owing, or if they do not dispute the notice within 5 days, they are presumed to have accepted the notice and must vacate by the effective end of tenancy date indicated on the notice (section 46(5) of the Act).

A landlord may seek an order of possession and a monetary order if a tenant has not disputed the notice and the time for filing an application to dispute that notice has passed ([sections 55\(2\)\(b\) and 55\(4\)](#) of the Act).

In this dispute, rent is \$1,850.00. It is not, as the tenant seems to believe, \$1,400.00. The tenant did not pay any rent for August 2021 and did not dispute the Notice. As such, the tenant is presumed to have accepted the Notice and must vacate the rental unit within two days of receiving a copy of the order of possession. It should be noted that the Notice complies with section 52 of the Act in form and content.

Taking into careful consideration all of the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for unpaid rent in the amount of \$6,400.00.

The landlords, having been successful in their application, are granted an additional \$100.00 to cover the cost of the application filing fee, pursuant to section 72 of the Act. In total, the landlords are awarded \$6,500.00 in compensation.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlords may retain the tenant’s security deposit of \$975.00 in partial satisfaction of the above-noted award. Pursuant to section 67 of the Act, the tenant is hereby ordered to pay the landlords \$5,525.00.

Issued in conjunction with this decision to the landlords is a copy of an order of possession. The landlords must serve a copy of the order of possession on the tenant by any means permitted under [section 88](#) of the Act. Should the tenant not comply with the order of possession the landlords may enforce this order in the Supreme Court of British Columbia.

Also issued in conjunction with this decision to the landlords is a copy of a monetary order. The landlords must also serve a copy of the monetary order on the tenant by any means permitted under section 88 of the Act. Should the tenant not pay the landlords the amount owing, the landlords may enforce the order in the Provincial Court of British Columbia (Small Claims Court).

Conclusion

The application is granted.

This decision is made on delegated authority under Section 9.1(1) of the Act.

Dated: March 8, 2022

Residential Tenancy Branch