



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes OPR, MNR, FF, SS

Introduction

This matter dealt with an application by the landlord for an order of possession and a monetary order to recover unpaid rent. The landlord also seeks to recover the cost of the filing fee for this application.

The landlord and the tenant were both represented at the hearing which took place via teleconference. The tenant at the hearing advised that they were attending the hearing based upon a letter they had received from the landlord's legal counsel, and that they had not received the application for dispute resolution or the notice of hearing from the landlord.

The landlord's counsel stated that the documents had been served via registered mail sent August 29, 2008, and provided a Canada Post tracking number. The tenant is deemed to have been served on the 5th day after the item was mailed, regardless of whether they accept the registered mail or not. I am satisfied that the tenant has been served the notice of this hearing as required.

At the hearing, the landlord seeks to rely upon a notice to end tenancy issued on August 21, 2008, in order to obtain an order of possession. The landlord's counsel stated that the notice to end tenancy had been served by another member of his firm, in person, on August 22, 2008 to the tenant. The tenant denies that she was ever served such a notice.

The landlord's basis for the monetary order is that the tenant has never paid rent since the commencement of the tenancy.

Issues(s) to be Decided

Has the tenant been properly served the notice to end tenancy dated August 21, 2008 as required, and if so may the landlord rely upon it to obtain an order of possession?

Is the landlord entitled to a monetary order for unpaid rent, and if so in what amount?



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Background and Evidence

The tenancy commenced on July 15, 2008 at a monthly rent of \$600.00, payable on the first of the month. The tenant at the hearing admits that she has not paid the required rent and alleges that she paid a security deposit of \$300.00, in cash, at the start of the tenancy. The landlord denies that a security deposit was paid.

The landlord relies upon the notice to end tenancy in requesting an order of possession. In order to be successful, the landlord must clearly demonstrate that the notice was properly served as required under s. 88 of the Residential Tenancy Act. In this case the landlord's counsel states that it was served in person by a person not in attendance at the hearing. The tenant denies service was carried out.

Analysis

I find that the landlord has established that rent in the amount of \$600.00 per month is payable and has not been paid since the commencement of the tenancy. The tenant has not denied such a fact. The landlord is therefore entitled to recover the unpaid rent owing by way of a monetary order. The monetary order will cover the months of August, and September, and I deny the landlord's request for rent for October as being premature. The landlord is also entitled to recover the cost of the filing fee for this application.

In relation to the order of possession, I am not satisfied that the tenant was served the notice that the landlord seeks to rely upon. At the hearing, the tenant denies receiving the notice and the landlord's counsel has not submitted anything by way of affidavit or witness testimony to refute the tenant's assertion. The landlord's application relies upon that notice and the burden of proof rests with the applicant to clearly show service upon the tenant.

Conclusion

I grant the landlord a monetary order in the amount of \$1250.00. The order may be filed with an enforced as an order of the Provincial Court of British Columbia.

I dismiss the landlord's application for an order of possession.



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Dated: September 25, 2008

Dispute Resolution Officer