



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR, MNR, FF, MT, CNR

Introduction

This hearing dealt with two applications: 1) from the landlord for an order of possession, a monetary order as compensation for unpaid rent / loss of rental income, an NSF fee and recovery of the filing fee; and 2) from the tenant for more time to make an application to cancel a notice to end tenancy, and cancellation of a notice to end tenancy. Both parties participated in the hearing and gave affirmed testimony.

Issues to be Decided

- Whether the tenant is entitled to more time to make an application to cancel a notice to end tenancy;
- Whether the tenant is entitled to cancellation of a notice to end tenancy;
- Whether the landlord is entitled to an order of possession
- Whether the landlord is entitled to a monetary order under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on December 1, 2008. Rent in the amount of \$660.00 is payable in advance on the first day of each month. The tenant's cheque for the security deposit was unable to be cashed by the landlord due to the fact that there were not sufficient funds (NSF) in the tenant's account.

The tenant failed to pay rent for the month of February 2009. Accordingly, the landlord issued a 10 day notice to end tenancy for unpaid rent. Subsequently, the tenant paid

the outstanding rent and the NSF fee on February 20, 2009. However, the tenant is currently in arrears with rent for the months of March and April 2009.

The landlord submitted into evidence a copy of the 10 day notice dated February 6, 2009 which was posted on the tenant's door on that same date.

The tenant's application for dispute resolution is dated February 16, 2009. The tenant identified a concern that her application for dispute resolution may be deemed late. In that event, in support of her application for an extension of time, she stated that she has tendonitis and had been instructed by a physician to rest.

Analysis

Section 88 of the Act addresses **How to give or serve documents generally** and provides in part, that a notice to end tenancy may be served "by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord."

Section 90 of the Act addresses **When documents are considered to have been received** and provides in part, that a notice to end tenancy is considered to have been received "if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached."

Based on the documentary evidence and testimony of the parties, I find that the notice to end tenancy was posted on the tenant's door on February 6, 2009. Pursuant to the above statutory provisions I find that the notice was therefore deemed to be received on February 9, 2009.

Information provided on the notice for the information of the tenant, includes as follows:

You have five (5) days to pay the rent or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch.

As stated earlier, the tenant filed her application for dispute resolution on February 16, 2009. I find that as the notice is deemed received by the tenant on February 9, 2009, day five (5) would be February 14, 2009, which is a Saturday. As Saturday and Sunday are not days when the Residential Tenancy Branch operates, in these circumstances Monday, February 16, 2009 is day five (5). Accordingly, I find that the tenant's application dated February 16, 2009 falls within the specified five (5) day time frame and that no extension of time to file her application is required.

Related to the above, section 25(3) of the Interpretation Act provides:

25(3) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

During the hearing, the tenant did not dispute that her payment of February's rent was late. Neither did she dispute that she has not paid rent for either March or April 2009. I find therefore that the tenant has breached a material term of the tenancy agreement which requires that the rent is due and payable at the first of the month. Accordingly, I dismiss the tenant's application to have the notice to end tenancy set aside, and I find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim of \$1,370.00. This is comprised of unpaid rent of \$660.00 for March 2009, unpaid rent / loss of rental income of \$660.00 for April 2009, and recovery of the \$50.00 filing fee for this application. I therefore grant the landlord a monetary order under section 67 of the Act for \$1,370.00.

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service upon the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I hereby grant the landlord a monetary order under section 67 of the Act for **\$1,370.00**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: April 6, 2009

Dispute Resolution Officer