



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR & FF

Introduction

This hearing dealt with an application by the landlord seeking an Order of Possession due to non-payment of rent by the tenant. The landlord stated that the tenant was served with notice of this application and hearing by registered mail on May 28, 2009 and it was unclaimed by the tenant. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent. I find that the tenant has been served in accordance with section 89 of the *Act* and I proceeded with the hearing in the tenant's absence.

Preliminary Issues:

The landlord provided the evidence for which he was to rely upon for this application on June 23, 2009 which was one day late according to the *Residential Tenancy Branch Rules of Procedure*: section 3.5.

In addition to the evidence the landlord submitted a new *Landlord's Application for Dispute Resolution* as an amendment. In the amendment the landlord sought to add a monetary claim to this application. The *Residential Tenancy Branch Rules of Procedure*: section 2.5, requires that the landlord amend the original application and file it with the *Residential Tenancy Branch* at least 7 days before the scheduled hearing.

I have accepted the landlord's late evidence. The evidence was one day late and I accept the landlord's evidence that it was served upon the tenant on June 19, 2009 within the required timeline.

I deny the landlord's request to amend his application as it was not filed properly or provided to the tenant or the *Residential Tenancy Branch* at least 7 days before the scheduled hearing.

However, I do amend the landlord's application to identify both the tenants that are named on the tenancy agreement provided as evidence by the landlord.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession due to the tenant's failure to pay rent?

Background and Evidence

The landlord provided a copy of the tenancy agreement which identifies that the tenancy began on July 15, 2008 for a fixed term ending on July 15, 2009. The monthly rent is \$1,300.00 due on the 15th of the month and a security deposit of \$650.00 was paid on August 15, 2008. I note that the tenancy agreement was not signed by the tenant.

The landlord submitted evidence that he served the tenant with a 10 day Notice to End Tenancy due to Non-payment of Rent and Utilities by registered mail on May 11, 2009. The notice is dated May 7, 2009 and states that the tenant failed to pay rent owed on April 15, 2009 for the sum of \$1,300.00. The Notice gives the tenant 10 day to vacate on May 15, 2009. The notice provides that the tenant has five (5) days to pay the rent or utilities to the landlord or to file an application for Dispute Resolution with the Residential Tenancy Branch.

The landlord requested an Order of Possession based on the tenant's failure to pay rent.

Analysis

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*.

Section 88 of the *Act*, How to give or serve documents generally, provides that a Notice to End Tenancy can be served by sending it by registered mail to an address at which the tenant resides. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent. I find that the tenant was served the 10 day Notice to End Tenancy in accordance with section 88 of the *Act*.

Section 46(4) of the *Act* provides that the notice can be disputed if a tenant fills an application for dispute resolution within five days of receiving the notice or the notice can be cancelled if the outstanding sum owed is paid within five days of receiving the notice. Section 46(5) of the *Act* states that if a tenant fails to exercise either of these rights then they are conclusively presumed to have accepted the end of the tenancy.

The notice is deemed to have been received by the tenant on May 16, 2009 and the effective date of the notice is amended to May 21, 2009 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.



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I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

I grant the landlord's application and I grant the landlord an Order of Possession effective **two (2) days** after it served upon the tenant. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I also Order that the landlord may recover the filling fee of \$50.00 paid for this application from the tenant by retaining it from the tenant's security deposit plus interest.

Dated: June 30, 2009.

Dispute Resolution Officer