



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MT, CNR, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of possession for unpaid rent.

This hearing was also scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for more time to cancel a notice to end tenancy, to cancel a notice to end tenancy for unpaid rent and for filing fee costs.

The landlord submitted copies of sworn affidavits which indicate that each tenant was served copies of the Application for Dispute Resolution and Notice of Hearing via posting to the door of the rental unit on September 9, 2009 at the address noted on the Application. These documents are deemed to have been served in accordance with section 89 of the Act, however the tenants did not appear at the hearing.

Preliminary Matters

The notice to end tenancy issued on August 11, 2009 indicated that there are two tenants, one female, E.A. and the other, a male, identified as John Doe. The landlord's counsel stated that the female tenant's identity is known to the landlord but that the male tenant has not provided the landlord with a name.

The male tenant has applied for dispute resolution under the name John Doe. The male tenant did not attend this hearing and has applied for dispute resolution under an assumed name. The landlord testified that she did not receive any notice of the tenant's Application for Dispute Resolution and was unaware that this would be a cross-application hearing. In the absence of the tenant and the absence of an application for dispute resolution which provides the tenant's legal name, I dismiss the tenant's application without leave to reapply.

I find that the male identified by the landlord as John Doe is an occupant of the rental unit.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Background and Evidence

Counsel for the landlord stated that the landlord purchased the property in September 2007, at which time it was vacant. In October 2007 the landlord discovered squatters living in the rental unit. In February 2008 the landlord discovered different people living in the rental unit and stated that at this point they entered into a verbal tenancy agreement with the female tenant. The landlord's counsel stated that the tenant paid the landlord \$1,000.00 in February 2008 and that \$750.00 rent was to be paid monthly. The landlord could not provide clarification as to the details of the \$1,000.00 payment and whether it consisted of rent, a combination of rent and a deposit, or a deposit alone.

The landlord stated that they attended at the rental unit on at least four occasions since February 2008 in attempts to receive payment for rent and that the tenant would either not answer the door or would not be home. The landlord stated that no further payment beyond the initial \$1,000.00 has been made by the tenants.

The landlord provided a copy of a sworn affidavit indicating that on August 13, 2009 at 11:28 a.m. the female tenant was personally served with the Notice to end tenancy issued on August 11, 2009.

The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the landlord received \$9,000.00 within five days of service. The Notice also indicated that the tenants are presumed to have accepted that the tenancy is ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants file an Application for Dispute Resolution within five days.

The Landlord stated that the Notice indicated the tenants owed 12 months rent. The landlord has not applied for monetary compensation.



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Analysis

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenants are deemed to have received this Notice on August 13, 2009 I find that the earliest effective date of the Notice is August 24, 2009, the date indicated on the Notice.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on August 24, 2009, pursuant to section 46 of the *Act*.

Section 46 of the *Act* stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The unknown male tenant did apply for dispute resolution but has failed to attend this cross-application hearing. There is no evidence before me that the tenants paid the outstanding rent arrears, therefore, pursuant to section 46(5) of the *Act*, I find that the tenants accepted that the tenancy has ended. On this basis I will grant the Landlord an Order of Possession that is effective **two days after it is served upon the tenants**.

Conclusion

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenants**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The tenant's Application for Dispute Resolution is dismissed without leave to reapply.

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: October 05, 2009.

Dispute Resolution Officer