



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This participatory hearing was scheduled pursuant to a Direct Request Proceeding decision issued October 30, 2009. In the decision of October 30, 2009 the landlord's request for an Order of Possession and Monetary Order for unpaid rent was set for a participatory hearing and the landlord was instructed to serve the Notices of Reconvened Hearing upon the tenants within three days of receiving the decision.

At the commencement of the hearing, only the landlord appeared. Upon enquiry, the landlord testified that she was unaware that she had to serve hearing documents upon the tenants and thought the Residential Tenancy Branch would serve the tenants. Shortly thereafter an individual claiming to be a tenant appeared at the hearing. The individual was not named as a tenant on the Landlord's Application for Dispute Resolution; however, the individual is named on the tenancy agreement and I herein refer to this person as a tenant.

Upon enquiry, the tenant testified that he had received the October 30, 2009 decision from the Residential Tenancy Branch and waited to be served by the landlord. In mid-November the landlord had not served the tenants with notice of this hearing and the tenant telephoned the branch to obtain instructions about calling in for the hearing.

As the landlord has failed to show that the tenants were served with the landlord's application and copies of the landlord's evidence that was provided to the Residential Tenancy Branch, I dismissed the landlord's claim for monetary compensation with leave to reapply. I proceeded to discuss ending the tenancy with both parties.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession?

Background and Evidence

I heard undisputed testimony that the tenants are required to pay rent of \$1,100.00 per month. The parties were in dispute as to whether rent had been paid for September 2009; however, both parties agreed that rent had not been paid for October, November or December 2009. The parties agreed that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent in October 2009. The tenant acknowledged that upon receiving the Notice the rent was not paid and that the tenants continue to occupy the rental unit.

During the hearing, the tenant advised that the rental unit will be vacated at the end of December 2009. Initially, the landlord requested the tenants be required to vacate immediately; however, due to a lack of service of the hearing documents for this hearing, the landlord consented to permit the tenants to occupy the rental unit until December 31, 2009 in exchange for an Order of Possession effective December 31, 2009.

Analysis

The dispute resolution process is based on the principals of natural justice, meaning a party is entitled to be notified of claims being made against them by another party and the opportunity to respond. That is one of the purposes of serving the Application for Dispute Resolution and Notice of Hearing upon the respondent and it is the applicant's obligation to serve the respondent with all necessary documents. Although one of the tenants appeared at the hearing and it was acknowledged by the tenant that the landlord was not paid rent for a number of months, the landlord failed to notify the

tenants that the landlord was seeking an Order of Possession and Monetary Order by way of this hearing.

Despite the lack of service of hearing documents, I recognize the agreement reached between the parties during this hearing for the tenants to vacate the rental unit by December 31, 2009. Accordingly, I hereby ORDER the tenants, and any other occupants of the rental unit, to vacate the rental unit on or before 1:00 p.m. December 31, 2009.

With this decision I provide the landlord with an Order of Possession effective December 31, 2009 to ensure the tenants vacate the rental unit by December 31, 2009. The landlord must serve the Order of Possession upon the tenants and may file the Order in The Supreme Court of British Columbia to enforce as an Order of that court.

As mentioned previously, the landlord's monetary claim for unpaid rent has been dismissed with leave to reapply in order to properly serve the tenants with notification of the monetary claims being sought by the landlord.

Conclusion

The landlord and tenant agreed that the tenants will be permitted to occupy the rental unit until December 31, 2009 and that the tenants will vacate the rental unit no later than December 31, 2009. The landlord has been provided an Order of Possession effective December 31, 2009 to serve upon the tenants.

The landlord's claim for monetary compensation for unpaid rent has been dismissed with 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: December 10, 2009.

Dispute Resolution Officer