



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for Unpaid rent as well as to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This tenancy started on March 11, 2004. Rent is \$910.00 per month payable in advance on the 1st day of each month. The Parties agree that there are currently rent arrears in the amount of \$3,085.00 which include the month of October 2010.

The Landlords' agent (S.P.) said the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent on July 20, 2010 by registered mail. The Tenants claim that they never received a copy of that 10 Day Notice. The Landlords did not provide a copy of the registered mail receipt showing the mailing address where the documents had been sent (as proof of service) nor did they provide a copy of the 10 Day Notice.

Analysis

Section 46(1) of the Act says that a Landlord may end a tenancy by giving a Tenant a 10 Day Notice to End Tenancy for Unpaid Rent. Section 88 of the Act sets out the various ways in which that document may be served. Section 90 of the Act says that a document delivered by mail is **deemed** to be received by the recipient 5 days later even if they refuse to pick up the mail. However, this is a rebuttable presumption. The Tenant (H.G.) claimed that he had not received the hearing package and the Landlords did not provide a copy of the registered mail receipt showing the mailing address where the documents had been sent (as proof of service). Consequently, I find that there is insufficient evidence to conclude that the Tenants were served with the 10 Day Notice to End Tenancy.



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Furthermore, s. 48(3) of the Act says that a 10 Day Notice must comply with s. 52 of the Act. Section 52 of the Act says (in part) that a Notice to End Tenancy when given by a Landlord must be in the approved form. As a copy of the 10 Day Notice in question was not submitted as evidence at the hearing, I find that there is insufficient evidence that it was an enforceable Notice. Consequently, the Landlords' application for an Order of Possession is dismissed with leave to reapply.

As the Parties agree that there are currently rent arrears in the amount of \$3,085.00, I find that the Landlords are entitled to a monetary order for that amount. However, I find that this is not an appropriate case to grant the Landlords' application to recover the filing fee for this proceeding from the Tenants. In particular, the Landlords brought the very same application in previous proceedings on September 17, 2010 and their application was dismissed with leave to reapply for the same reasons.

Conclusion

The Landlords' application for an Order of Possession is dismissed with leave to reapply. A Monetary Order in the amount of **\$3,085.00** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount of the Order is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

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 27, 2010.

Dispute Resolution Officer