



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. He testified that he served the Notice of a Dispute Resolution Hearing to the tenants by way of registered mail sent on February 23rd, 2011. The tenants did not participate and the hearing proceeded in the tenant's absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single family house. Pursuant to a written agreement, the month to month tenancy started on August 15th, 2009. The monthly rent of \$900.00 was payable on the 15th of each month.

The landlord testified that the next rent payment was due on February 15th, 2011. He stated that the tenants did not pay rent and that he served them with a 10 Day Notice to End Tenancy on February 16th, 2011 by posting the notice on the door. The landlord stated that he had no knowledge that the notice was a two page document, and that he only served page 1.

In his documentary evidence, the landlord submitted a handwritten tenancy agreement which he said had been drafted and signed by the tenants. He pointed to a clause in which the tenants declare that rent does not have to be paid from February 15th to March 15th. The landlord said that he did not agree to any of the terms and that he did not sign the agreement.

Analysis

I accept the landlord's undisputed testimony that he served the tenants with the Notice of Dispute Resolution in a proper manner pursuant to the *Residential Tenancy Act*. I find that the tenants knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 52 of the *Residential Tenancy Act* provides that a Notice to End Tenancy, when given by a landlord, must be in the approved form. In examining the evidence provided by the landlord, I find that the document in question was an approved form; however the landlord did not serve page 2. At the bottom of page 1, the notice states:

"This is page 1 of a 2-page Notice. The landlord must sign page one of this notice and must give the tenant pages 1 & 2."

The tenant did not receive page 2. Therefore in that context I find that the tenant was not served pursuant to the Act, and I declare the notice of no effect.

Based on the available evidence, I find the tenants' tenancy agreement self-serving; it carries no weight in considering why they should not pay rent on February 15th. Accordingly, I find that the landlord is entitled to a monetary order for unpaid rent for the sum of \$900.00.

Conclusion

The landlord's application for an order of possession is dismissed and the tenancy will continue. The landlord may issue the tenant with a new Notice to End Tenancy compliant with statute.

Since the landlord's application had merit I award him recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I award the landlord a monetary order for the sum of \$950.00.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

The full text of the Act, Regulation, Residential Policy Guidelines, Fact Sheets, Forms and more can be accessed via the website: www.rto.gov.bc.ca/

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: March 08, 2011.

Residential Tenancy Branch