



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing, gave affirmed testimony, and provided evidence in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on April 28, 2011, the tenant did not attend. All evidence and the testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The landlord testified that this month-to-month tenancy began in 2000, although the parties did not enter into a written tenancy agreement until October 1, 2010. A copy of the Tenancy Agreement was provided in advance of the hearing, and it states that the tenancy starts on August 1, 2010. Rent in the amount of \$1,050.00 per month is payable in advance on the 1st day of each month.

The landlord further testified that the tenant had paid a security deposit in the amount of approximately \$450.00, which was applied to rental arrears prior to the written Tenancy Agreement being prepared, and the Tenancy Agreement shows that no money was collected for a security deposit or a pet damage deposit because the landlord did not receive another security deposit from the tenant.

The landlord further testified that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities personally on April 14, 2011. A copy of the notice was provided in advance of the hearing, however the landlord only provided 1 page of the 2 page notice, and testified that both pages were served on the tenant at the rental unit. The notice states that the tenant failed to pay rent in the amount of \$1,050.00 that was due on April 1, 2011. The notice is dated April 14, 2011 and contains an expected date of vacancy of April 25, 2011. Also provided was a Proof of Service document that states that the tenant was served personally by leaving the document with "an adult who answered the door as the tenant was downtown."

When questioned about the rental arrears, the landlord stated that the tenant was in arrears around \$4,000.00 but did not provide any testimony with respect to the amount or dates that the arrears accumulated. He further testified that it is useless to obtain a monetary order, and applies for an Order of Possession.

Analysis

In the circumstances, I find that the landlord's evidence is unclear with respect to rental arrears and therefore, I dismiss that portion of the landlord's application.

With respect to the landlord's application for an Order of Possession, the landlord gave verbal testimony that he served the tenant personally with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 14, 2011, but provided a Proof of Service document prior to the commencement of this hearing, which is evidence that he did not serve the tenant personally, but served an unknown adult person. The *Residential Tenancy Act* states that the landlord may serve the tenant by leaving a copy with the tenant, by mailing it by regular or registered mail, by leaving a copy at the person's residence with an adult who apparently resides with the tenant, by leaving it in the mail box or mail slot for the address at which the person resides, by attaching a copy to a door or other conspicuous place at the address at which the person resides, or by transmitting a copy by fax. The *Act* does not permit the landlord to serve the notice by serving any adult who answered the door, but with an adult who apparently resides with the tenant. I heard no testimony of serving another person, nor did I hear any testimony that the person served apparently resides with the tenant. In fact, the landlord's testimony was that he served the tenant personally. Therefore, I am not satisfied in the evidence before me that the landlord has properly served the tenant with the notice to end the tenancy.

It is important that the landlord understand that my authority is to enforce the *Residential Tenancy Act*, and therefore, asking questions to satisfy a Dispute

Resolution Officer that the landlord and the tenant have complied with the *Act* is essential to making an Order. It may be that the landlord does not understand the difference between serving a person personally and serving another person on behalf of the tenant. Personal service means that the person for whom the document is intended was delivered the document personally. However, the failure of parties to prove their claims must result in a dismissal or the opposing party may be at liberty to apply to the Supreme Court of British Columbia for a stay of any order, and may also result in further costs being incurred that may not be recoverable.

Under the *Act*, the landlord is at liberty to re-serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. If the tenant is served in a manner described above, and the landlord can provide oral testimony or proof of such service, the landlord may again apply for an Order of Possession and a monetary order so long as the tenant does not pay the rent in full within 5 days of the date the tenant is deemed to be served with the notice to end the tenancy.

For the assistance of the parties, I am attaching Landlord and Tenant Fact Sheets respecting serving documents and Direct Requests for an Order of Possession due to Unpaid Rent or Utilities.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

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: May 26, 2011.

Residential Tenancy Branch