



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and unpaid rent, an order of possession due to unpaid rent and for recovery of the filing fee.

The landlords appeared; the tenants did not appear.

The landlord testified that they served the tenants with their Application for Dispute Resolution and Notice of Hearing by registered mail on August 23, 2012. The landlord supplied testimony of the tracking number of the registered mail. The landlord acknowledged serving both tenants by placing the hearing documents in the same envelope.

I find the tenant was served in a manner complying with section 89 (2) of the Residential Tenancy Act (the "Act") and the hearing on the landlord's request for an order of possession proceeded in the tenants' absence.

The landlord was provided the opportunity to present their evidence orally as no documentary evidence was submitted prior to the hearing.

Preliminary Issue:

As I had no evidence to review, I allowed the landlord to testify about his relevant documents. At the conclusion of the hearing, I allowed the landlord to send his documents to me via fax, with the understanding that the fax was to be delivered by the end of the business day. The landlord complied by sending in the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") and a partial copy of the tenancy agreement.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and to recover the filing fee?

Background and Evidence

This tenancy began on October 28, 2011, monthly rent is \$1100.00, and a security deposit of \$550.00 was paid by the tenants at the beginning of the tenancy.

The landlord gave evidence that on August 9, 2012, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting it on a conspicuous place on the rental unit, that being a front window easily visible to the tenants. The landlord explained that this window was the most obvious place to post the Notice so that the tenants would see the Notice. The landlord said that he observed that the Notice was later removed.

I asked the landlord if both pages of the 2 page Notice were served on the tenants and he said that they were.

The Notice listed unpaid rent of \$1100.00 as of July 28, 2012. The effective vacancy date listed on the Notice was August 18, 2012. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to August 22, 2012.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenants had five days to dispute the Notice.

The landlord stated that the tenants made a payment of \$1100.00 sometime in August, 2012, well after 5 days of receiving the Notice, but still owed rent for August and September. As of the date of the hearing, the tenant owed \$2200.00 in unpaid rent.

I have no evidence before me that the tenants applied to dispute the Notice.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

I accept that the tenants were deemed served the Notice on August 12, 2012, three days after posting the Notice on a conspicuous place, did not pay the outstanding rent within 5 days and did not apply to dispute the Notice. I therefore find the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I accept that service of the application for dispute resolution was delivered to the tenants in a manner consistent with Section 89 (2) (d) to allow the landlords an order of possession for the rental unit.

I therefore find that the landlords are entitled to an order of possession for the rental unit effective two days after service of the order upon the tenants.

I grant the landlord a final, legally binding order of possession, which is enclosed with the landlords' Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

As to the landlords' request for a monetary order, Section 89 (1) (a) and (c) of the *Act* states that service of a copy of the application for dispute resolution must be delivered to the tenants by leaving a copy with the person or by registered mail. In other words, the Act and principles of natural justice require that each tenant be served individually, in separate envelopes, in order to be informed of the nature of the claim made against them. In this case, the landlord placed the application for dispute resolution for both tenants in the same envelope.

Without confirmation of being served, the tenants/respondents would easily have any Decision or Order made against them overturned upon Review.

Therefore, I find the landlords failed to establish that tenants have been served with the Notice of Hearing and Application for Dispute Resolution under Section 89 (1) (a) and (c) necessary for a monetary order. I **dismiss** the portion of the landlords' application for a monetary order for unpaid rent, **with leave to reapply**.

I find the landlords' application had some merit and I allow the landlord to withhold \$50.00 from the tenants' security deposit for recovery of the filing fee.

Conclusion

The landlord is granted an order of possession.

The portion of the landlords' application for a monetary order is dismissed with leave to re-apply.

The landlord may withhold \$50.00 from the tenants' security deposit for recovery of the filing fee.

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* and is being mailed to both the applicant and the respondent.

Dated: September 26, 2012.

Residential Tenancy Branch