



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding New Aiyansh Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, ET, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:14 a.m. in order to enable them to connect with this teleconference hearing scheduled for 11:00 a.m. The male landlord (the landlord) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. He testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door at 3:50 p.m. on April 5, 2013. He submitted a signed Proof of Service document attesting to his service of the 10 Day Notice in this manner. He also testified that he sent both tenants copies of the landlords' dispute resolution hearing package by registered mail on April 20, 2013. He provided the Canada Post Tracking Numbers to confirm these registered mailings. I am satisfied that the above documents were served to the tenants in accordance with the *Act*.

At the commencement of this hearing, I asked the landlord to clarify the landlords' request for an early end to tenancy and an Order of Possession on that basis. He said that he was uncertain about this portion of the application because he was informed by Service BC representatives when he attended that office to include a request for an early end to tenancy in addition to the Order of Possession he was seeking on the basis of unpaid rent. After I explained the unusual and exceptional circumstances that would need to be in place in order to obtain an early end to tenancy, the landlord said that no such exceptional circumstances existed in this tenancy that would entitle the landlords to an early end to this tenancy. As he provided no evidence of entitlement to an early end to this tenancy and confirmed that he was not seeking an early end to this tenancy

without using the other mechanisms available through the *Act*, I dismissed this portion of the landlords' application at the commencement of this hearing.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This periodic tenancy commenced on October 1, 2005 by way of an oral agreement. Monthly rent is currently set at \$300.00, payable in advance by the first of each month.

The landlord entered into written evidence copies of a number of 10 Day Notices. The unsigned 10 Day Notice that gave rise to the landlords' current application for dispute resolution was issued and posted on the tenants' door on April 5, 2013. That Notice identified as \$300.00 in unpaid rent that became due on April 1, 2013. This Notice sought an end to this tenancy by April 15, 2013, corrected to April 2013.

Analysis

Section 52 of the *Act* reads in part as follows:

In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,...and

(e) when given by a landlord, be in the approved form.

As the 10 Day Notice issued on April 5, 2013 was not signed, I find that it did not comply with the requirements of section 52(a) of the *Act* and is of no legal effect.

In addition, during the hearing, the landlord testified that he accepted a rent payment of \$300.00 on May 2, 2013 for rent owing from April 2013. He said that he issued a receipt to the tenants for this rental payment for April 2013, which noted that this was "in lieu of condition report." He did not note at that time that he was accepting the tenants' payment for use and occupancy only. At the hearing, I advised the landlord that his acceptance of the tenants' rental payment after the corrected date when this tenancy was scheduled to end (i.e., April 18, 2013) reinstated this tenancy.

For the reasons outlined above, I find that the 10 Day Notice issued on April 5, 2013 is of no effect and this tenancy remains in force. As noted at the hearing, the landlords will need to issue a new 10 Day Notice to the tenants if they wish to seek an end to this

tenancy based on the tenants' alleged non- payment of rent that became due on May 1, 2013.

Since the landlords have been unsuccessful in their application, I dismiss their application to recover their filing fee from the tenants.

Conclusion

I dismiss the landlords' application for an Order of Possession for unpaid rent on the basis of the 10 Day Notice of April 5, 2013 and the landlord's request for recovery of the filing fee for this application without leave to reapply. This tenancy continues.

I dismiss the landlord's application for an early end to tenancy.

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 16, 2013

Residential Tenancy Branch

