



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CMHA - Kootenays and NR, Agent
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord requested an Order of possession for unpaid rent and a monetary Order for unpaid rent.

The tenant applied for more time to cancel a Notice ending tenancy, to cancel a Notice ending tenancy for unpaid rent and compensation by way of a partial return of the security deposit.

The landlord was present at the scheduled start time of the hearing. The landlord provided affirmed testimony that on June 24, 2013, at 1:30 p.m., with another tenant present as a witness, the Notice of hearing and evidence was posted to the tenant's door.

As the Notice of hearing package and application were posted to the door I determined that the tenant had been served with Notice of the hearing and that the hearing could proceed based on the request for an Order of possession. Posting to the door is not an appropriate method of service when requesting a monetary order. Therefore, the monetary claim was dismissed with leave to reapply.

The landlord said she did not receive a Notice of hearing package from the tenant.

Preliminary Matters

The tenant did not attend the hearing until almost 10 minutes had elapsed. When the tenant entered the hearing she provided affirmed testimony that she had received the landlord's hearing package.

The tenant said she had served the landlord with Notice of her hearing and application, given to a groundskeeper, who agreed to give the documents to the landlord. The

tenant could not recall the date she gave the groundskeeper the documents but thinks it was on the 3rd day after she received the hearing package.

In the absence of evidence that the groundskeeper did in fact deliver the hearing package I determined that the landlord had not received the tenant's application or Notice of hearing. I then reviewed the tenant's application and explained that she cannot claim return of a portion of the security deposit when the tenancy has yet to end. The tenant's application was dismissed.

After the tenant entered the hearing I reviewed all of the landlord's testimony provided to that point and offered the tenant an opportunity to make submissions in relation to the Notice and unpaid rent.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Background and Evidence

The tenancy commenced on September 24, 2013; subsidized rent in the sum of \$375.00 is due on the 1st day of each month. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on June 10, 2013 a ten day Notice for unpaid rent was issued and served to the tenant by posting to the door on that date. The tenant did not dispute receipt of the Notice.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$375.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice; June 24, 2013, unless the tenant filed an Application for Dispute Resolution within five days.

The tenant paid \$160.00 on June 13, 2013 and was given a receipt for occupancy only. This was not in dispute.

The tenant acknowledged she did not pay July 2013 rent.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenant received the Notice to End Tenancy on June 13, 2013.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on June 13, 2013, I find that the earliest effective date of the Notice is June 23, 2013.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on June 24, 2013, the date indicated on the Notice, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant disputed the Notice but failed to serve the landlord with Notice of her hearing.

The tenant did confirm that she did not pay the rent in full within 5 days of June 13, 2013; therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended effective June 24, 2013. On this basis I will grant the landlord an Order of Possession that is effective 2 days after the Order is served to the tenant.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession.

The landlord's monetary claim is dismissed with leave to reapply.

The tenant's application is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 18, 2013

Residential Tenancy Branch