



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit or pet damage deposit, and to recover the filing fee.

The landlord and an agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and his agent were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The landlord and his agent testified that the tenant was served with Notice of Hearing by posting to the tenant's door on July 24, 2013. The landlord and agent testified that they last saw the tenant at the rental unit on July 17, 2013, however, had to call the police on July 28, 2013 after discovering two unknown females at the rental unit. The landlord stated that one female was arrested by the police and the other female fled the rental unit before police could speak to her. A police file number was submitted in evidence. The landlord testified that the two females advised him that the tenant was in the rental unit on July 28, 2013, but fled out of a window before police arrived. I accept that the landlord posted the Notice of Hearing on July 24, 2013 on the door of the rental unit and that the tenant was still in possession of the rental unit at that time.

Preliminary and Procedural Matters

Section 89(1) of the *Act* imposes specific requirements for where and how the applicant must serve a respondent with a Notice of Hearing. Section 89(1) does not permit an applicant who is seeking a monetary order to serve the respondent by posting the

Notice of Hearing to the door of the respondent. Therefore, I find the landlord has not served the tenant in accordance with the *Act* for the purposes of a monetary order and, as a result, **I dismiss** the landlord's monetary claim **with leave to reapply**.

Section 89(2) of the *Act* does permit application under section 55 for an order of possession to be posted to the respondent's door. As a result, I find that the respondent was sufficiently served in accordance with the *Act* for the purposes of the landlord's application seeking an order of possession. As a result, this hearing proceeded with consideration of the landlord's request for an order of possession for unpaid rent or utilities under the *Act*.

Issue to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities under the *Act*?

Background and Evidence

The landlord testified that a month to month tenancy agreement began on June 1, 2003. Monthly rent in the amount of \$700.00 including utilities was due on the first day of the month at the start of the tenancy, and was increased over the course of the tenancy to \$800.00 per month including utilities. A security deposit of \$350.00 was paid by the tenant at the start of the tenancy, which the landlord continues to hold.

The landlord confirmed service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated July 2, 2013, by posting to the tenant's door on July 2, 2013 for \$2,000.00 owing in rent due July 1, 2013, with an effective vacancy date of July 13, 2013. The landlord testified that a witness, AY, witnessed the landlord serve the 10 Day Notice on the tenant on July 2, 2013 at 3:05 p.m. at the rental unit. The landlord stated that the tenant did not dispute the 10 Day Notice or pay the \$2,000.00 owing in rent within five days of receiving the 10 Day Notice. A copy of the proof of service for the 10 Day Notice was submitted in evidence.

The landlords are seeking an order of possession of the rental unit as the tenant has left her personal items in the rental unit, which the landlord confirmed on July 28, 2013, when the police attended the rental unit and arrested a female in the rental unit.

The landlord submitted copies of both pages of the 10 Day Notice and a proof of service document in evidence for this proceeding.

Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession - A copy of the proof of service supporting this information was submitted in evidence. Pursuant to section 90 of the *Act*, documents posted to the door are deemed served three days later. I find that the tenant was deemed served with the 10 Day Notice on July 5, 2013 which is three days after the 10 Day Notice was posted to the tenant's door on July 2, 2013, which was witnessed by third party, AY.

The tenant did not dispute the 10 Day Notice within five days of being served with the 10 Day Notice. Pursuant to section 46 of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which in the matter before me is July 15, 2013.

The tenant continues to occupy the rental unit by having her personal belongings in the rental unit. Pursuant to section 55 of the *Act*, **I grant the landlords an order of possession effective two (2) days after service on the tenant.**

As the landlord's claim had merit, **I grant** the landlord the recovery of the filing fee in the amount of \$50.00. **I authorize** the landlord to retain **\$50.00** of the tenant's \$350.00 security deposit, in full satisfaction of their \$50.00 filing fee. As a result, I find the tenant's security deposit balance is now \$300.00, plus interest owing in accordance with the *Act* and Regulation as the tenancy began on June 1, 2003.

Conclusion

I grant the landlord an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I authorize the landlord to retain \$50.00 of the tenant's security deposit as described above.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

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: August 26, 2013

Residential Tenancy Branch

