



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by writing "*and August loss of rent of \$600.00*" in the details of their dispute.

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as he clearing indicated his intention of seeking to recover the payment for August, 2013.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 17, 2013, by the Landlord's Agent (hereinafter referred to as the Landlord) to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

At the outset of this proceeding the Landlord was present and provided affirmed testimony that they had served the Tenant with the hearing documents, application for dispute resolution and their evidence by registered mail on July 19, 2013, and also by posting copies of all the documents to the rental unit door on August 13, 2013.

The Tenant signed into the proceeding late and acknowledged receipt of the documents that were taped to his door but argued that he never received a copy of a 10 Day Notice.

Based on the aforementioned, I accept the Landlord's submissions regarding methods of service, and I find the Tenant was sufficiently served notice of this proceeding, in accordance with the Act.

I informed the Tenant of the testimony I had heard prior to his attendance and explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlord be granted an Order of Possession?
2. Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: Copies the tenancy agreement; a letter issued to the Tenants on July 8, 2013 assigning management of the tenancy to the Agent with a 10 Day Notice enclosed; and a 10 Day Notice issued July 8, 2013.

The Landlord testified that the Landlord was not able to collect June rent so effective July 1, 2013, he hired the agent to either collect the rent or evict the Tenants. On July 8, 2013, they posted the letter and 10 Day Notice to the Tenant's door. The Tenants have failed to pay rent for June, July and August and they continue to reside in the rental unit.

The Tenant initially testified that he received the evidence package but argued immediately that he never received an eviction notice. He argued that his girlfriend paid June 2013 rent but that he had no proof and she could not testify because she was currently incarcerated. He acknowledged that rent for July and August were not paid but argued that he attempted to pay the owner and was told to deal with the Agent. When asked why he did not contact the Agent, the Tenant claimed that he signed the agreement with the owner and he had never received an eviction notice.

Upon further clarification the Tenant began to speak about a recent 10 Day Notice and then stopped mid sentence and began to argue that he had received various eviction notices from the property owner but never received anything from the Agent.

Analysis

Upon careful review of the aforementioned testimony and documentary evidence before me I favor the evidence of the Landlord who stated the Tenants have failed to pay rent for June, July, and August, and that they were served a 10 Day Notice on July 8, 2013,

when it was posted to their door. I favor the Landlord's evidence over the Tenant's testimony because it was forthright and supported by documentary evidence.

The Tenant relied on oral testimony which I found to be contradictory and unreliable. I make this finding in part because the Tenant signed into the proceeding late and did not hear the Landlord's testimony about the contents of the evidence package that he taped to the Tenants' door; yet the Tenant immediately argued that the package did not contain a copy of the eviction notice. Furthermore, the Tenant stopped mid sentence when speaking about eviction notices which I find to be indicative of him receiving the 10 Notice that was posted to his door.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Tenant's explanation that he was never served a copy of the July 8, 2013, 10 Day Notice to be improbable, given the circumstances presented to me during the hearing. Accordingly, I find the Tenant was served the 10 Day Notice effective July 11, 2013, three days after it was posted to his door, in accordance with section 90 of the Act.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants are deemed to have received the 10 Day Notice on July 11, 2013; therefore, the effective date of the Notice is **July 21, 2013**, in accordance with section 90 of the Act. The Tenants did not pay the rent and did not dispute the Notice, therefore, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$1,200.00 which is comprised of June and July 2013, rent (2 x \$600.00). The Tenants failed to pay rent in accordance with the tenancy

agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$1,200.00**.

As noted above this tenancy ended **July 21, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for August 2013, not rent. The Tenants are still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of August 2013, in the amount of **\$600.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenants.

The Landlord has been awarded a Monetary Order in the amount of **\$1,850.00** (\$1,200.00 + \$600.00 + \$50.00). This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: August 22, 2013

Residential Tenancy Branch

