



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR

For the landlord: OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss and unpaid rent, for authority to retain the tenants' security deposit, and for recovery of the filing fee.

The landlord's agent (hereafter "landlord") attended the hearing; the tenants did not attend.

The landlord testified that she served the tenants with their Application for Dispute Resolution and Notice of Hearing by attaching the documents to the tenants' door on November 26, 2013 and the landlord's amended application for dispute resolution via the same method on December 30, 2013.

The hearing proceeded on the landlord's application in the tenant's absence.

Thereafter the landlord was provided the opportunity to present her evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Procedural matter-Despite having their own application for dispute resolution set for hearing on this date and time, the application of the landlord and the Notice of these Hearings, the tenants did not appear.

Therefore, pursuant to section 10.1 of the Rules, I dismiss the application of the tenants, without leave to reapply.

Preliminary issue-Section 89(1) of the Residential Tenancy Act requires that an application for dispute resolution be served upon the respondent (the tenants in this case) by leaving it with the person or by registered mail.

For an order of possession for the rental unit, however, under section 89(2) a landlord is permitted to serve the tenant their application for dispute resolution by attaching the documents to the tenant's door, as is the case here.

As the landlord served the tenants the notice of their hearing and application for dispute resolution by attaching the documents to the tenants' door, I therefore find the tenants were served notice of this hearing in a manner complying with section 89(2) of the Act and the hearing proceeded on the portion of the landlord's application for an order of possession for the rental unit, only, in the tenants' absence.

I have dismissed that portion of the landlord's application for dispute resolution seeking a monetary order for unpaid rent, with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit and to recover the filing fee?

Background and Evidence

The landlord gave evidence that this tenancy began on August 2, 2013, that monthly rent is \$650, and that the tenants paid a security deposit of \$325 at the beginning of the tenancy.

The landlord supplied oral and documentary evidence that on November 5, 2013, the tenants were served with a 10 Day Notice for Unpaid Rent by attaching it to the tenants' door, listing unpaid rent of \$350 as of November 1, 2013. The effective vacancy date listed on the Notice was November 15, 2013.

Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenants were deemed to have received the Notice on November 8, 2013, and the effective move out date is automatically changed to November 18, 2013, pursuant to section 53 of the Act.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenants had five days to dispute the Notice by making an application for dispute resolution, which was the case here.

The landlord stated that the tenants have made no further rent payments since issuance of the Notice.

The landlord's relevant documentary evidence included a copy of the written tenancy agreement and a copy of the Notice.

I note that the tenants applied to dispute the Notice; however the tenants failed to appear at this hearing in order to prove that they did not owe the amount listed on the Notice.

Analysis

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

I find the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent or appear at the hearing in support of their application, and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant.

I allow the landlord's request for recovery of the filing fee.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord's application for an order of possession for the rental unit due to unpaid rent is granted.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

At the landlord's request, I allow the landlord to retain \$50 from the tenants' security deposit for recovery of the filing fee. In the alternative, I have granted the landlord monetary order for \$50.

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: January 6, 2014

Residential Tenancy Branch

