



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes: **OPR, MNR, FF**

Introduction

This hearing was reconvened from a Direct Request Proceeding application to a participatory hearing. The landlord applied requesting an Order of Possession for Unpaid Rent and a monetary Order for unpaid rent. An interim decision was issued on November 26, 2013.

The landlord provided affirmed testimony that once the landlord received the interim decision issued on November 26, 2013 he posted the Notice of today's hearing to the tenant's door. The tenant has not removed the Notice and the landlord has not seen him at the rental unit for some time. The landlord has not taken possession of the rental unit as the tenant continues to have belongings in the unit and has not returned keys to the unit.

These documents are deemed to have been served in accordance with section 89 of the Act no later than December 31, 2013; however the tenant did not appear at the hearing.

Preliminary Matters

As the tenant was served with Notice of this hearing via posting to the door the application was amended to consider the request for an Order of possession only. When requesting a monetary Order, posting hearing documents does not comply with section 89 of the Act. The landlord has leave to reapply requesting compensation.

Issue(s) to be Decided

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

Background and Evidence

The landlord confirmed that rent is due on the 31st day of each month. When the landlord applied for dispute resolution he mistakenly submitted a copy of a Proof of Service document for a 10 day Notice ending tenancy that was issued on November 1, 2013 for rent owed September 30, 2013. A copy of a Notice issued on November 1, 2013 for October rent was supplied as evidence. The October rent cheque was returned to the landlord at the end of the month, around the time November rent was due.

On November 2, 2013 the landlord issued a 2nd 10 day Notice to end tenancy for unpaid November rent that was due on October 31, 2013. The landlord made an error on this Notice and indicated November rent was actually due on November 1, 2013.

The landlord supplied a copy of the Proof of Service for the November 2, 2013 Notice. The Proof of service indicated that on November 2, 2013 at 6:15 p.m. the landlord handed the tenant a copy of the Notice. Service occurred at the rental unit. The landlord had another tenant present as a witness; JB., who signed the Proof of Service document, confirming service occurred.

The Notice had an effective date of November 12, 2013. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$800.00 within 5 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 unless the tenant filed an Application for Dispute Resolution within five days.

The tenant has not paid rent and did not dispute either Notice issued to him.

Analysis

Section 90 of the Act stipulates that a document that is hand delivered is deemed served on the day of personal delivery. Therefore, I find that the tenant received the Notice to End Tenancy on November 2, 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 November 2, 2013, I find that the earliest effective date of the Notice is November 12, 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 November 12, 2013, pursuant to section 46 of the Act.

Section 68 of the Act provides:

Director's orders: notice to end tenancy

- 68** (1) *If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that*
- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and*
 - (b) in the circumstances, it is reasonable to amend the notice.*
- (2) *Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,*
- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or*
 - (b) set aside or amend a notice given under this Act that does not comply with the Act.*

Therefore, I find that it is reasonable to amend the Notice issued on November 2, 2013 to indicate that rent was due on October 31, 2013. The tenant signed a tenancy agreement indicating rent was due on this day of each month.

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. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended effective November 12, 2013.

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.

The monetary claim is dismissed with leave to reapply within the legislated time-frame.

This final decision should be read in conjunction with the interim decision issued on November 26, 2013.

Conclusion

The landlord is entitled to an Order of possession.

The landlord has leave to reapply requesting compensation.

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: January 23, 2014

Residential Tenancy Branch

