



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent, a monetary Order for unpaid rent and damage or loss under the Act and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process.

Preliminary Matters

The landlord provided affirmed testimony that on June 7, 2014 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail, to the rental unit address noted on the application. A Canada Post tracking number was provided as evidence of service to each tenant. Both registered mail packages were unclaimed and returned to the landlord.

The tenants provided affirmed testimony that they did not receive the registered mail sent to each of them on June 7, 2014. The tenants then confirmed that they did not pick up the registered mail as the postal outlet is not open when they are off work.

The tenants were each present at the hearing and acknowledged the 10 day Notice to end tenancy that was in dispute. Section 90 of the Act sets out service time-frames; registered mail is deemed served on the 5th date after mailing.

Section 71(2) of the Act provides:

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

(c) that a document not served in accordance with section 88

or 89 is sufficiently given or served for purposes of this Act.

(Emphasis added)

I then determined that the tenants had been sufficiently served with Notice of the hearing. They were present and indicated an understanding of the landlord's claim. The tenants said they had receipts to show why they had not paid rent. No submission was made in relation to emergency repairs. The tenants said there was a sudden flood and they suffered a loss; they do not have tenant's insurance. The tenants also paid a vet bill.

The landlord made an application requesting an Order of possession, unpaid rent and compensation for alarm fines. I confirmed that the main issue to deal with during this proceeding is the Notice to end tenancy and unpaid rent. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the landlord's request for an Order of possession and unpaid rent and dismissed the balance of the claim with liberty to re-apply.

The landlord served an amended application; sent to both tenants in a single registered mail package on July 7, 2014. As the landlord could not determine which, if either, of the tenants may have received that mail I determined that only the original application would be considered.

As rent is the most basic term of a tenancy the application has been amended to include unpaid rent to July 2014.

Mutually Settled Agreement – End of Tenancy

The tenants acknowledged receipt of a 10 day Notice ending tenancy for unpaid rent issued on May 10, 2014. Then Notice was posted to their door on the date it was received; May 10, 2014.

The tenant's acknowledged that \$1,200.00 of rent owed in the sum of \$1,625.00 for May 2014 had been paid on May 13, 2014.

The tenants and landlord agreed that the tenancy will end on July 31, 2014 at 1 p.m. and that the landlord is entitled to an Order of possession for that date and time.

Opportunity to settle dispute

63 *(1) The director may assist the parties, or offer the parties an opportunity, to settle their dispute.*

(2) If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.

Therefore, as explained during the hearing, in support of the mutually settled agreement, I find and Order that the tenancy will end effective July 31, 2014 at 1 p.m.

Based on the mutually settled agreement the landlord has been granted an Order of Possession that is effective **at 1 p.m. on July 31, 2014**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Unpaid Rent

The tenancy commenced in November 2014; the actual start date was in dispute. Rent is \$1,625.00, due on the 1st day of each month.

The tenants confirmed that they have not paid any rent since a \$1,200.00 payment made on May 13, 2014. There was no evidence of any emergency repair made in accordance with the Act and the tenants do not have an Order allowing rent reduction.

Therefore, I find that landlord is entitled to compensation for unpaid rent in the sum of \$3,675.00 (\$425.00 May; \$1,625.00 June and \$1,625.00 July 2014;) inclusive.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$3,725.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession by mutual agreement and Order.

The landlord is entitled to a monetary Order for unpaid rent.

The landlord is entitled to filing fee costs.

The balance of the landlord's claim has been severed, with leave to reapply.

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 24, 2014

Residential Tenancy Branch

