



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR, RR, PSF
For the landlord: OPR, MNR, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), an order requiring the landlord to provide services or facilities required by law, and for an order allowing a reduction in rent.

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties 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.

Preliminary matter-The landlord stated that she was never served with the tenants’ application, evidence, or Notice of Hearing, and was not aware that the tenants had filed an application until attending the Residential Tenancy Branch (“RTB”) office to file her own application. The landlord submitted further that she did not know what the tenants were disputing.

In response to my question, the male tenant stated that the female tenant placed their application and Notice of Hearing in the landlord’s mailbox.

During the hearing, when the landlord was testifying in support of the Notice, the tenants exited the telephone conference call hearing, after 16 minutes, and did not return. After waiting approximately 5 minutes for the tenants to return to the hearing, the balance of the hearing proceeded on the landlord's evidence and in the tenants' absence. The hearing concluded after 30 minutes.

Due to the tenants' failure to serve the landlord with the application and Notice of Hearing as required by section 89(1) of the Act, to the landlord's assertion that she has never received the tenants' application, and to the tenants' exit from the hearing prior to providing responsive evidence, I dismiss the tenants' application, without leave to reapply.

Preliminary matter #2-The landlord submitted that she served the tenants with her application and Notice of Hearing via registered mail. In response to my question, the male tenant stated the female tenant received the documents, and that he had "sort of looked at them." I accept that both tenants were served with the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

Background and Evidence

The tenancy agreement submitted by the landlord shows that this tenancy began on March 1, 2014, monthly rent is \$1000, and the tenants were required to, but did not pay a security deposit of \$500 and a pet damage deposit of \$500.

The landlord stated that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent on July 14, 2014 by leaving it with tenant MS, listing unpaid rent of \$3350 as of July 1, 2014. The effective move-out date listed was July 24, 2014.

The landlord asserted that since the issuance of the Notice, she has received no rent payments, and as of the date of the hearing, the tenants owed unpaid rent of \$5350, which was the monetary claim listed in her application.

Analysis

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenants disputed the Notice within business five days; however, the tenants failed to serve the landlord with their application as required under the Act and I have dismissed their application.

In the case before me, I find the landlord submitted sufficient oral and documentary evidence that the tenants owed the landlord rent when the Notice was issued and that they did not pay any of the rent owed to the landlord within five days of receiving the Notice.

Therefore, I find the tenancy has ended due to the tenants' failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenants.

I find the landlord submitted sufficient evidence that the tenants owe the amount of \$5350 unpaid rent through September 2014.

I therefore find that the landlord is entitled to a monetary award in the amount of \$5400, comprised of outstanding rent of \$5350 through September 2014, and the \$50 filing fee paid by the landlord for this application.

Conclusion

The tenants' application is dismissed.

The landlord's application has been 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 it has been served upon them, this 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.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of their monetary award of \$5400, which is enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

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: September 17, 2014

Residential Tenancy Branch

