



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER NATIVE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent and to recover the filing fee for the Application.

Only the Landlord's, agent and property manager G.R. and building manager, R.J. appeared at the hearing. They both gave affirmed testimony and were provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

G.R. testified he served the Tenant with the Notice of Hearing and their Application on October 17, 2014. Provided in evidence was a copy of the registered mail tracking number. According to G.R., the Tenant retrieved the registered mail package on October 23, 2014. Under the Act documents served this way are deemed served 5 days later; accordingly, I find the Tenant was duly served as of October 22, 2014.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement.

The tenancy began Jun 1, 2012. Rent was determined by a means test. The current monthly rent, for the year \$2014 was payable in the amount of \$672.00.

The Tenant failed to pay rent for the month of May, June, July, August, September, October and November 2014. The Landlord issued several 10 day Notice to End Tenancy for non-payment of rent on October 8, 2014 by posting to the rental unit door that same day and indicating the amount of \$3,506.00 was due as of October 1, 2014 (the "Notice").

Based on the testimony of the G.R. and R.J. who witnessed G.R. posting the Notice to the door, I find that the Tenant was served with the Notice on October 8, 2014. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of October 11, 2014.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, October 16, 2014. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant did not pay the rent, nor did she dispute the Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of \$3,556.00 comprised of \$3,506.00 in unpaid rent and the \$50.00 fee paid by the Landlord for this application. I note that the total amount owing for rent from May 2014 to November 2014 is more than the amount awarded, however, the Notice and the Landlord's Application for Dispute Resolution both note the sum of \$3,506.00 and the Tenant was only given notice that the Landlord sought this amount in addition to the filing fee.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as 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: November 27, 2014

Residential Tenancy Branch

