



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on November 13, 2014, to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony.

Upon review of service of documents the Tenant submitted that she was not served with copies of the Landlord's application for dispute resolution or the hearing documents. The Tenant argued that she picked up a registered mail package on November 25, 2014, which contained only a tenant ledger, appendix for additional evidence, and a receipt dated November 17, 2014. The Tenant provided the tracking information for that package in her oral testimony.

The Tenant submitted that she did not know about this hearing until she went to the Residential Tenancy Branch to seek advice about the Landlord refusing to accept her December 1, 2014 rent payment. She stated the RTB staff told her at that time about this hearing and they printed a copy of the Notice of a Dispute Resolution Hearing letter so she could attend this hearing.

Upon review of the RTB record, I note that the record indicates the Tenant went into the RTB office on December 05, 2014 and told the staff that she had not received a copy of the Notice of hearing document. The file indicates a copy of the Notice of Hearing was given to the Tenant and the Tenant was told of the deadline for service of evidence. The record further indicates that it was December 09, 2014, that the Tenant called the RTB to discuss issues with the Landlord not wanting to accept her December rent by personal cheque.

The Landlord testified that the registered mail package the Tenant received as stated above, was a second package that had been sent to the Tenant with some additional evidence. The Landlord noted that their first package, which would have included their application and hearing documents, was sent to the Tenant on November 17, 2014. The Landlord provided the tracking information for the first package in her oral testimony.

Upon review of the Canada Post website it was noted that Canada Post attempted delivery of the first package on November 19, 2014 and a card for pickup was left. A final notice for the first registered mail package was left for the Tenant on December 04, 2014.

The Landlord had submitted documentary evidence to the RTB which included photocopies of both envelopes that were sent to the Tenant by registered mail and included copies of the registered mail tracking receipts that were pasted to each envelope. Upon review of each envelope I note that both packages were correctly addressed to the Tenant listing the same address and postal code.

Based on the above information I find that the Tenant was provided with 3 opportunities to receive the first registered mail package and she did not make an attempt to receive or retrieve it. I find this to be a deliberate effort on the part of the Tenant to avoid service of the hearing documents and the Landlord's application. The evidence before me suggests that the Tenant had known since November 17, 2014, of the Landlord's intention to seek possession of her unit, which is when the Tenant paid the remainder of her November 2014 rent; therefore, it is reasonable to conclude that she would have known, or ought to have known, what the first registered mail package contained, which could explain why she avoided receiving that package.

Common law has established that a person cannot refuse or intentionally avoid service by refusing to pick up registered mail. Therefore, I found that the Tenant was sufficiently served with the Landlord's application and Notice of this hearing, pursuant to Section 71 of the *Act*, and I proceeded with the hearing.

The Landlord confirmed receipt of the Tenant's evidence. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to an Order of Possession?
2. Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on November 1, 2010 which switched to a month to month tenancy after May 1, 2011. Rent began at \$840.00 per month and effective September 1, 2014, rent increased to \$861.00 and was payable on the first of each month. On October 19, 2010, the Tenant paid \$412.50 as the security deposit, \$10.00 as a key deposit, plus \$35.00 as a remote deposit.

The Landlord submitted that on November 2, 2014 she personally served the Tenant a 10 Day Notice for \$291.00 in unpaid rent that was due on November 1, 2014. The balance owed of \$291.00 was not paid by the Tenant until November 17, 2014, at which time the Tenant was issued a receipt for "use and occupancy only". On December 1, 2014 the Landlord received a cheque and issued a receipt for "use and occupancy only". Shortly afterwards the Landlord returned the December 1, 2014 cheque to the Tenant and requested payment by cash or money order as the Landlord was worried the cheque would not clear. The Landlord has since deposited the December 1, 2014 cheque and is waiting to hear if it cleared the Tenant's bank.

The Tenant testified and confirmed that she paid her November 2014 rent late and that she did not pay the balance owed until November 17, 2014, 15 days after she received the 10 Day Notice. She argued that the accounting person at the Landlord's office gave her up until November 20th to pay the November rent. She did not have evidence of that extension and argued that the accounting person was to send an email to the resident manager and explain that she was granted more time.

The Tenant argued that her December 1, 2014 payment was submitted on time and in acceptable tender. She testified that she checked her bank information just prior to the hearing and that her bank records indicate that the payment cleared her account.

The parties were given the opportunity to settle these matters; unfortunately, they were too far apart and a settlement agreement could not be reached.

In closing, the Landlord pointed to the Tenant's evidence which included several rent receipts which clearly showed that the Tenant had repeatedly paid her rent late. The Landlord now seeks an Order of Possession effective December 31, 2014.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on November 2, 2014, and the effective date of the Notice was **November 12, 2014**, in accordance with section 46 of the Act. The evidence supports that the Tenant did not pay the full amount owed within the required five day period; rather, she waited until November 17, 2014, 15 days after the Notice had been received, before paying the amount owed.

Notwithstanding the Tenant's argument that an accounting clerk gave her an extension until November 20, 2014 to pay the outstanding balance; I find there to be insufficient evidence that there was such an extension offered or that it changed the effectiveness of the 10 Day Notice. Rather, the documentary evidence which included the November 17, 2014, receipt clearly shows the Landlord's intention that the money was not received for rent and did not reinstate the tenancy. Therefore, as payment was accepted for "use and occupancy only" and the tenancy was not reinstated, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the *Act*.

Based on the above this tenancy ended **November 12, 2014**; however, while awaiting this hearing, the Landlord accepted payment of \$861.00 for use and occupancy of the rental unit up to December 31, 2014. Accordingly, I approve the Landlord's request for an Order of Possession effective December 31, 2014.

The Landlord's request for a monetary order for unpaid rent is now moot.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

The Landlord has been granted an Order of Possession effective **December 31, 2014 after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded the one time award of \$50.00 as full recovery of the filing fee. The Landlord may withhold that amount from the Tenant's security deposit as full satisfaction of the award.

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: December 16, 2014

Residential Tenancy Branch

