



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
CEDARTREE VILLAGE APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlords applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This tenant applied, pursuant to the *Act*, for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlord's representative ("the landlord") and tenant WC attended the hearing and were given full opportunity to be heard, to present evidence and to make submissions. Tenant CS was not in attendance.

Preliminary Issue: Service of Documents

The landlords' representative provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") was sent to both tenants by registered mail packages on November 10, 2014. The landlord provided registered mail tracking numbers and receipts. The tenant WC confirmed receipt of the 10 Day Notice. The landlord gave sworn testimony that the landlords' Application for Dispute Resolution

hearing package was personally served to the tenant WC on November 24, 2014 by a member of the office. The tenant WC confirmed receipt of this package. However, the tenant WC's undisputed testimony was that tenant CS no longer resided at the rental unit by this date. The landlord confirmed, in her testimony that she merely sent tenant CS's package to the last known address and made no other attempts to ensure service to tenant CS.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order, as the landlord seeks in this matter:

89(1) An application for dispute resolution...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

The landlords have not served tenant CS in a manner required by section 89(1) of the *Act*. I am not satisfied that tenant CS was properly served with the landlords' application for dispute resolution.

Based on the evidence, I find that Tenant WC has been served with the Dispute Resolution hearing documents seeking a monetary Order in accordance with section 89(1) of the *Act* on November 24, 2014. However, I find that the other tenant, Tenant CS, has not been served in accordance with section 89(1) of the *Act*. I find that both tenants have been served with the landlord's application for an Order of Possession in accordance with section 89(2) of the *Act* on November 24, 2014.

I accept that the 10 Day Notice was deemed served to the tenant WC on November 15, 2014, five days after mailing. The corrected effective date of the 10 Day Notice is November 25, 2014. The tenant gave sworn testimony that his Application for Dispute Resolution hearing package was filed on November 21, 2014 and that he personally served the dispute resolution package to the landlords on November 23, 2014.

Issues to be Decided

Should the tenant's application to cancel the 10 Day Notice be cancelled? Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

Both parties testified that this 12 month fixed term tenancy began on August 1, 2014. As a result of signing a 12 month lease, the tenants were to receive a discount on their rent. The monthly rental amount of \$719.00 is payable on the first of each month (discounted from 750.00 per month). The landlord testified that she continued to hold the \$375.00 security deposit that the tenants paid on July 12, 2014. The tenant continues to reside in the rental unit.

The landlord has applied for an Order of Possession for unpaid rent for the month of November 2014. The landlord testified that the tenant did not pay rent of \$719.00 due on November 1, 2014. The landlord also testified that the tenant did not pay rent on December 2014. The tenant confirmed, in his testimony, that, because of a variety of struggles, he was unable to pay rent in November and December.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the November 2014 rent after receiving the 10 Day Notice on November 15. The landlord applied for an Order of Possession.

The landlord is also seeking a monetary award of \$1438.00 for the months November and December 2014 and \$50.00 fees for insufficient funds when the tenant's automatic bank withdrawals were returned to the landlord. The landlord provided a copy of the written tenancy agreement that outlines the provision of a \$25.00 fee for late or "nsf" cheques/withdrawals.

Analysis

The tenant failed to pay the November and December 2014 rent within five days of receiving the 10 Day Notice to End Tenancy. While the tenant WC did make an application to cancel the notice to end tenancy, this application was not made within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the Act, the

tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenants and anyone residing on the premises to vacate the premises by November 25, 2014. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find that the landlord is entitled to receive an order for unpaid rent in \$1438.00 for November and December 2014. I am issuing the attached monetary order that includes the landlord's application for \$1438.00 in unpaid rent for November and December 2014 against tenant WC.

The landlord also applied for \$50.00 in fees as a result of the insufficient funds to process the tenant's automatic withdrawal of rent for November and December 2014. This penalty is clearly outlined in the tenancy agreement. I find that the landlord is entitled to \$50.00 in "nsf" fees for the months of November and December 2014 against tenant WC.

The landlord testified that he continues to hold a security deposit of \$375.00. I will allow the landlord to retain the security deposit plus interest in partial satisfaction of the monetary award against WC. There is no interest payable for this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I dismiss the tenant's application to cancel the notice to end tenancy and application for recovery of his filing fee.

I am granting the landlords an Order of Possession to be effective two days after notice is served to the tenant(s). If the tenant(s) does/do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

As I am not satisfied that Tenant CS was properly served with the landlord's application for dispute resolution, I dismiss the landlords' application naming her as a Respondent with leave to reapply. With respect to the monetary award, the order is made solely against Tenant WC.

I issue a monetary Order in favour of the landlords as follows against Tenant WC:

Rental Arrears for November 2014	\$719.00
Rental Arrears for December 2014	719.00
2 x \$25.00 NSF Fee (November, December)	50.00
Less Security Deposit	-375.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1163.00

The landlords are provided with formal Orders in the above terms. Should Tenant WC fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 22, 2014

Residential Tenancy Branch