



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on December 11 2014, to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities.

The hearing was conducted via teleconference and was attended by the Landlord who provided affirmed testimony. The Landlord submitted that the Tenants were personally served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, in person to K.F. at the rental unit, on the same date that he filed his application.

Based on the submissions of the Landlord I find that K.F. was sufficiently served Notice of this proceeding, in accordance with section 89 of the Act. Therefore, I proceeded in absence of either Tenant.

Issue(s) to be Decided

Has the Landlord met the burden of proof to end this tenancy?

Background and Evidence

The Landlord testified that the Tenants occupied the rental unit sometime near the beginning of July 2014 on a verbal tenancy agreement. Rent is payable on the first of each month in the amount of \$900.00 and on June 17, 2014 the Tenants paid \$450.00 as the security deposit.

The Landlord confirmed that he had not submitted documentary evidence to the Residential Tenancy Branch and did not serve evidence to the Tenants to support his application for an Order of Possession and Monetary Order. He stated that he served the Tenants with a 10 Day Notice but the Tenants have not paid rent. He indicated that he resides in the upper level of the house and he had not seen the Tenants at the house for the past 3 or 4 days.

Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Landlord.

The Notice to End Tenancy document is not a mere technicality. In fact, it is hard to imagine another document being more relevant or material, in particular when the Landlord is asking to for an Order of Possession and a Monetary Order.

The responsibility of proving a claim is on the person making the claim. As the Landlord failed to provide a copy of the 10 Day Notice, I find the Landlord has provided insufficient evidence to prove his claim.

I further find the Landlord has provided insufficient evidence to prove he served both Tenants with the Notice of Hearing and Application for Dispute Resolution.

Therefore, I dismiss the claim with leave to reapply. The Notice to End Tenancy is not cancelled.

Conclusion

I HEREBY DISMISS the Landlord's application, with leave to reapply.

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: January 13, 2015

Residential Tenancy Branch

