



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR, MNR, FF

Introduction

The original decision in this proceeding was the outcome of the landlord's application for an order for possession and a monetary order for unpaid rent. The hearing was held on November 27, 2014 and was conducted by conference call. The tenant did not attend the hearing, although the landlord testified that she was personally served with the application and Notice of Hearing. By decision dated November 27, 2014 the landlord was granted an order for possession effective two days after service on the tenant. He was also awarded the filing fee for his application to be deducted from the security deposit. On December 8, 2014 the tenant applied for a review consideration of the November 27th decision. In her application for review consideration she said: "I was not aware of a hearing. I received no notice to attend a hearing. I have no tenancy agreement with Mr. (name of landlord). Nor did I ever receive one".

The tenant's application for review consideration was granted by decision dated December 15, 2015. The review was granted based on the arbitrator's finding that it was possible that the tenant was not served with notice of the hearing. The arbitrator ordered that a review hearing be convened to provide the tenant with an opportunity to respond to the landlord's claims. The tenant was directed to serve the landlord with the review decision and the Notice of the new hearing within 3 days of receipt of the Review Consideration Decision.. I was appointed to conduct the review hearing by conference call. The tenant did not properly serve the landlord with the review decision and Notice of Hearing; the landlord only learned of the hearing a few days ago when he found a copy of the Notice of Hearing in his mailbox, however he was able to attend and to testify at the hearing.

Issue(s) to be Decided

Should the original decision and order dated November 27, 2014 be confirmed, varied or altered?

Background and Evidence

The landlord testified that the rental unit is a basement suite in his house in Port Coquitlam. The tenancy began in September, 2013. The monthly rent is \$800.00, due on the first of each month. The tenant paid a \$400.00 security deposit at the beginning of the tenancy.

On October 10, 2014 the landlord personally served the tenant with a 10 day Notice to End Tenancy for unpaid rent. There is no dispute that the tenant was served with the Notice to End Tenancy or that there was outstanding rent in the amount of \$2,400.00 when the Notice was given. The landlord filed the application for dispute resolution on October 17, 2014. He testified that he personally served the tenant with the application and Notice of hearing at the rental property on October 20, 2014 in the presence of a witness. At the hearing the tenant said that she had no recollection of being served, but she did not deny that she was served; she mentioned several stressful events that may have distracted her, or affected her recollection of events.

As noted in the original November 27th decision, the tenant paid \$2,400.00 on October 21, 2014. The landlord told the tenant when he received the payment that he was still proceeding with his application for an order for possession and would not reinstate the tenancy. The tenant made a further payment of \$800.00 on November 24, 2014, but the cheque was returned due to insufficient funds. The tenant later replaced the cheque with an \$800.00 money order.

At the hearing the landlord said that the tenant has paid December rent, but has not paid rent for January. He requested that the original decision and order for possession be confirmed and that the tenant be required to move out of the rental unit. The tenant acknowledged that January rent was unpaid, but she said she intended to pay it the day after the hearing. The tenant requested more time because she has just returned to work and it will be difficult for her to move while continuing her employment and keeping her child in school. The landlord said that he does not want to continue the tenancy, but he is willing to allow the tenant to remain in the rental unit until January 31, 2015, provided she pays rent for January.

Analysis

I accept the landlord's testimony that he personally served the tenant with the application and Notice of Hearing on October 20, 2014. I prefer his evidence to that of the tenant, who did not deny the fact of service, but claimed a lack of recollection of the

event. I note as well that the tenant acknowledged that she was served with a Notice to End Tenancy on October 10, 2014 and she did not dispute the Notice to End Tenancy or pay the outstanding rent within five days of receiving the Notice.

Based on the evidence presented at this review hearing, I find that the original decision and order for possession dated November 27, 2014 must be confirmed.

Conclusion

The order for possession dated November 27, 2014 is a valid and effective order that requires the tenant to immediately vacate the rental unit. If the landlord chooses to do so he may refrain from enforcing the order until January 31, 2015. As noted in the original decision the landlord is entitled to retain the sum of \$50.00 from the security deposit that he holds.

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 16, 2015

Residential Tenancy Branch

