



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to section 55.

The two tenants, "tenant MM" and "tenant HF," did not attend this hearing although it lasted approximately 28 minutes. The landlord's agent "SA" attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. SA confirmed that she appears on behalf of VES, a company representing the landlord. The landlord's mother "HR" and stepfather "PR" also testified at this hearing and confirmed that they were also appearing as agents on behalf of the landlord. All of the landlord's agents, SA, HR and PR, are referred to collectively as "landlord" in this decision. The landlord's agents are referred to individually by their initials, as indicated above.

SA gave sworn testimony that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent, dated December 16, 2014 ("10 Day Notice"), by way of registered mail addressed to both tenants, on December 17, 2014. The landlord provided a Canada Post receipt and tracking number, as proof of service, with the landlord's Application. SA testified that she checked the tracking number on the day of this hearing and the Canada Post website indicated that as of December 19, 2014, the package was signed for and successfully delivered. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were both deemed served with the 10 Day Notice on December 22, 2014, five days after its registered mailing.

SA testified that she served both tenants separately with the landlord's Application for Dispute Resolution hearing package ("Application") on January 8, 2015, by way of registered mail. The landlord provided Canada Post receipts and tracking numbers, as proof of service, with the landlord's Application. SA testified that she checked the

tracking number on the day of this hearing and the Canada Post website indicated that as of January 19, 2015, a final notice was being issued before the package would be returned to its sender. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's Application on January 13, 2015, five days after its registered mailing.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

SA testified that this tenancy began on March 1, 2014 for a fixed term to end on February 28, 2015, after which it will revert to a month to month tenancy. Monthly rent in the amount of \$1,050.00 is payable on the first day of each month. A security deposit of \$525.00 was paid by the tenants on January 29, 2014 and the landlord continues to retain this deposit.

A written tenancy agreement was provided with the landlord's Application. SA testified that although tenant HF did not sign the tenancy agreement, she was still listed as a tenant on the agreement and she was still residing in the rental unit on a periodic basis. SA testified that as of the day prior to this hearing, she was advised by HR, who checked the rental unit, that the tenants were still residing in the rental unit.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$1,050.00 was due on December 1, 2014. The notice indicates an effective move-out date of December 26, 2014. SA testified that the tenants made two payments of \$1,000.00 each on December 29, 2014. HR testified that she mailed a receipt for this \$2,000.00 total payment to the tenants. A copy of this receipt was provided with the landlord's Application, which indicates that the \$2,000.00 payment was accepted for December 2014 and January 2015 rent. However, HR testified that this did not cover the full rental amount due for these two months, which totalled \$2,100.00. HR testified that there was still an outstanding balance of \$200.00 total owed for this tenancy and that the \$2,000.00 payment was accepted for "use and occupancy only," although she did not write this on the receipt. HR stated that the tenants were "chronically late" in their rental payments, throughout this tenancy. PR testified that the personal landlord sent a text message to the tenants thanking them for the \$2,000.00 payment but advising them that they still needed to vacate the rental unit. PR testified that there was no verbal communication with the tenants because they refused to speak to the landlord, so contact was made through emails and text messages.

SA confirmed that no rent payments have been received from the tenants since December 29, 2014. A rent ledger was provided with the landlord's Application and SA confirmed that \$200.00 in unpaid rent was still outstanding for this tenancy. The rent ledger indicates that rent has been paid late by the tenants since March 2014.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not appear. The tenants failed to pay the full rent due on December 1, 2014, within five days of being deemed to have received the 10 Day Notice. Although a \$2,000.00 partial payment was made by the tenants on December 29, 2014, and it was accepted for December 2014 and January 2015 rent, this was beyond the five day period, it did not cover the full amount of rent due, it was accepted for "use and occupancy only," and it did not reinstate the tenancy. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of these actions within five days led to the end of this tenancy on January 2, 2015, the corrected effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by January 2, 2015. As this has not occurred, I find that the landlord is entitled to an Order of Possession effective at 1:00 p.m. on January 31, 2015. The landlord made an oral request for this order of possession date, at this hearing.

During the hearing, SA requested leave to reapply for a monetary order for unpaid rent based on the 10 Day Notice, dated December 16, 2014. SA testified that an error was made in her office and she inadvertently omitted this relief from the landlord's application. As the landlord has not made an application for any monetary orders, I do not need to provide the landlord with leave to reapply. The landlord is free to make future applications in accordance with the *Act*, regarding this tenancy.

During the hearing, SA testified that an error was made in her office and she inadvertently omitted the landlord's request to recover the filing fee for this Application. I advised SA that since the landlord had not requested this relief in the landlord's Application and the tenants had no notice that the landlord was seeking this relief, the landlord is not entitled to amend the Application to seek this relief or to recover the filing fee for this Application.

During the hearing, SA testified that she served a 1 Month Notice to End Tenancy for Cause, dated December 16, 2014 ("1 Month Notice"), to the tenants on December 17, 2014, together with the 10 Day Notice. SA stated that she was pursuing an order of

possession for cause at this hearing as well. I note that the landlord has not applied for an order of possession for cause, the tenants had no notice that this would form part of this hearing and I have issued an Order of Possession on the basis of the 10 Day Notice. For these reasons, I have not considered the landlord's request to include the 1 Month Notice in my assessment of this matter.

Conclusion

I grant an Order of Possession to the landlord effective at **1:00 p.m. on January 31, 2015**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme 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: January 26, 2015

Residential Tenancy Branch

