



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEITHAL CONSTRUCTION CO. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

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 and a monetary order for unpaid rent pursuant to section 67.

The tenants did not appear. The landlord was given full opportunity to be heard, to present evidence and to make submissions. Landlord FL provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent was served to the tenants on December 3, 2014 by posting the notice on the tenants' door. Landlord FL gave sworn testimony that he served the tenants with individual copies of the Application for Dispute Resolution hearing package on January 20, 2015 by registered mail. Landlord FL submitted proof in the form of information from Canada Post on the tracking of the dispute resolution packages that the items had been picked up. Landlord FL testified that the tenants left for Ireland in October and neither landlord were aware of the tenants' return date. When a landlord is serving a tenant, the landlord must ensure that they are mailing documents for service to the address that the tenants reside at the time. However, both landlords provided testimony that the rental unit still held all of the tenants' possessions, including furniture and other expensive items, suggesting they were still residing in the unit. Furthermore, they provided evidence from Canada Post that the packages had been picked up.

Point 11 within Residential Policy Guideline No. 12 states that a document not served personally but by mail, it is deemed served on the fifth day after mailing it.

Deemed service means that the document is presumed to have been served unless there is clear evidence to the contrary... Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Given the evidence provided in this matter and, on a balance of probabilities, I accept that the tenants are sufficiently served for the purposes of this application. Pursuant to section 89 and 90 of the *Act* and in consideration of the Policy Guidelines, I accept the testimony of the two landlords present for the hearing and the evidence submitted on their behalf that suggest the tenants still resided in the rental unit as of January 25, 2015. I accept that the tenants were deemed served with the 10 Day Notice and the Application for Dispute Resolution hearing package on December 6, 2014 and January 25, 2015 respectively.

Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent arising out of this tenancy?

Background and Evidence

The landlord gave evidence that the original lease for the premises began in 2014 and that the rental amount for this unit was established at \$2500.00. Landlord FL testified that he continued to hold the \$1250.00 security deposit that the tenants paid at the beginning of this tenancy. Both landlords testified that the tenants left for Ireland in October 2014. Landlord FL testified that he received emails from the tenants in Ireland stating that rent would be sent via Western Union. No funds were received from the tenants, according to both landlords. While the landlords testified that neither of them has had contact with the tenants recently, Landlord TE testified that the rental unit still holds the tenants' possessions, including furniture and other expensive items.

The landlord has applied for an Order of Possession for unpaid rent for the months of November and December 2014. The landlord testified that the tenants did not pay rent of \$2500.00 due on November 1, 2014 nor did they pay rent of \$2500.00 due on December 1, 2014.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on December 3, 2014. The landlord testified that the tenants did not pay the November or December rent after deemed service of the 10 Day Notice. After receiving no response or rental payment, the landlord applied for an Order of Possession.

As of the date of this hearing, the landlords both testified that no rent has been received from the tenants since October 1, 2014 although their belongings are still within the rental unit. The landlords both testified that there has been no contact with the tenants since early in December 2014.

Analysis

The tenants failed to pay the November or December rent within five days of deemed service of the 10 Day Notice to End Tenancy. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by December 16, 2014. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

I find that the landlord is entitled to receive an order for unpaid rent in November 2014, December 2014, January 2014 and February 2014. The landlord testified that he has been unable to consider re-renting the unit at this time as the tenants' belongings are within the unit and they testified they felt they had no authority to enter or store the tenant's belongings. I accept Landlord FL's testimony that the earliest that the premises will be available for rent will be March 1, 2015.

I accept this uncontested evidence offered by the landlord with respect to non-payment of rent. I am issuing the attached monetary order that includes the landlord's application for \$10,000.00 in unpaid rent for November and December 2014 as well as January and February 2015.

The landlord testified that he continues to hold a security deposit of \$1250.00 plus any interest from the beginning of the tenancy to the date of this decision for this tenancy. There is no interest payable for this period of time. I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award. There is no interest payable for this period.

Conclusion

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

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

Rental Arrears for November 2014	\$2500.00
Rental Arrears for December 2014	2500.00
Rental Arrears for January 2015	2500.00
Rent for February 2015	2500.00
Less Security Deposit and No Interest	-1250.00
Total Monetary Award	\$8750.00

The landlord is provided with formal Orders in the above terms. Should the tenant(s) 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: February 19, 2015

Residential Tenancy Branch

