Dispute Resolution Services

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

On February 27, 2015 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied:

- for an Order of Possession
- for a monetary Order for unpaid rent
- for a monetary Order for damage
- to retain all or part of the security deposit
- to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that on March 01, 2015 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord wishes to rely upon as evidence were posted on the door of the rental unit. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89(2) of the *Residential Tenancy Act (Act);* however the Tenant did not appear at the hearing.

On February 14, 2015 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied**:**

- for a monetary Order for money owed or compensation for damage or loss
- to recover the cost of emergency repairs
- for an Order requiring the Landlord to make repairs to the rental unit
- for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement
- for Order requiring the Landlord to provide services or facilities
- to recover the security deposit
- to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that the Landlord located a copy of the Tenant's Application for Dispute Resolution in the Landlord's mail box, although the Landlord

does not recall when it was located.   In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*.

Preliminary Matter

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing is to notify the other party that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claim(s). When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Act.*

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

(a) by leaving a copy with the person;

(c) by sending a copy by registered mail to the address at which the person resides;

(d) by sending a copy by registered mail to a forwarding address provided by the tenant; or

(e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

The Landlord submitted no evidence to show that the Tenant was served with the Application for Dispute Resolution or Notice of Hearing in accordance with section 89(1) of the *Act*.   The Landlord submitted no evidence to cause me to conclude that the Tenant received the Application for Dispute Resolution, therefore I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Application for Dispute Resolution was not served in accordance with section 89(1) of the *Act*, I am unable to consider the Landlord's application for a monetary Order for anything other than the filing fee. The Landlord retains the right to file another application for a monetary Order.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(2) of the *Act.*

Section 89(2)(d) of the *Act* stipulates, in part, that a landlord may serve a tenant with an Application for Dispute Resolution by attaching a copy to a door or other conspicuous place at the address at which the tenant resides. As I have determined that the Landlord posted the Application for Dispute Resolution on the door of the rental unit on March 01, 2015, I find it is appropriate to consider the Landlord's application for an Order of Possession.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to compensation related to deficiencies with the rental unit and/or to recover the cost of emergency repairs?

Should the security deposit be retained by the Landlord or returned to the Tenant?

Is there a need to issue an Order requiring the Landlord to make repairs to the rental unit; to comply with the *Act* or the tenancy agreement; and/or to provide services or facilities?

Background and Evidence

The Agent for the Landlord stated that this tenancy began on October 01, 2014. He stated that many of the Tenant's personal belongings appear to have been removed but he is not certain if the rental unit has been fully vacated, as the keys to the rental unit have not been returned.

The Agent for the Landlord stated that the Tenant agreed to pay monthly rent of $700.00 by the first day of each month. He stated that the Tenant did not pay rent when it was due on January 01, 2014.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of January 31, 2015, was personally served to the Tenant by the male Landlord on January 03, 2015.

The Agent for the Landlord stated that the Tenant paid her rent for January on January 11, 2015, but the Landlord did not agree to continue the tenancy when the rent was paid.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of $700.00 by the first day of each month and that she did not pay rent when it was due on January 01, 2015.

If rent is not paid when it is due, section 46(1) of the *Act* authorizes a landlord to end the tenancy by providing proper written notice. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act,* was personally served to the Tenant on January 03, 2015.

Section 46 of the *Act* stipulates that a tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice.   In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on the effective date of the Notice, which was January 31, 2015.   On this basis I grant the landlord an Order of Possession.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

The hearing was scheduled to commence at 10:30 a.m. on this date. By the time the hearing was concluded at 10:45 the Tenant had not appeared. I find that the Tenant failed to diligently pursue the Tenant's Application for Dispute Resolution and I therefore dismiss it <u>without leave to reapply</u>.

<u>Conclusion</u>

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. In the event the rental unit has not been vacated, this Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim of $50.00 in compensation for the fee paid to file an Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain $50.00 from the Tenant's security deposit, in partial satisfaction of the monetary claim.

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: March 10, 2015

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Residential Tenancy Branch