



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'Akola RNH Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent; both tenants and their advocate.

The landlord testified each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail to the dispute address on March 26, 2015 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

The male tenant testified that the parties had not received the landlord's packages until he contacted the landlord and the documents faxed to him. He states that he had informed the landlord months ago, verbally, that he was not living in the rental unit any longer and that the female tenant would be out of town caring for a family member and so that all correspondence should be redirected.

The landlord submitted that they had not been informed that the male tenant was no longer living in the rental unit or that the female tenant would not be able to receive any correspondence if sent to the rental unit.

At the hearing I reserved my decision on the matter of service and ordered both parties to provide copies of all communications over the course of the 3 months prior to the hearing. I order that these records be submitted no later than the end of business on May 13, 2015. As of May 14, 2015 the landlord had submitted copies of these records, including written correspondence, notations and telephone logs; the tenants had not submitted any records of any correspondence between the parties.

I note there is a handwritten notation on a tenant ledger dated December 17, 2014 that says: "In discussion with Russel, he advised that he was collecting social assistance using is mom's address." However, there is nothing in the notation that records that the tenant informed the landlord that he was living anywhere other than the rental unit. I

also note that there is no other notation or record of either of the tenants contacting the landlord to advise that the female tenant could not be reached at the rental unit.

As such, I find that there is no evidence to support the tenants' assertion that the landlord should have served any documents related to the tenancy or this proceeding to an address other than the rental unit.

Based on the above, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*.

At the time of the hearing the tenants also submitted that they had evidence that some of the rent the landlord was claiming had been paid, in part, from the male tenant's daughter through income assistance and in part by a money order.

As I was reserving my decision on the service issues to await for the parties to submit additional evidence on service I ordered the landlord to provide copies of all receipts and relevant tenant ledgers and the tenants to provide copies of any money orders issued or documentation from any social service agency that had provided the payment of rent either directly to the landlord or to the tenants or the tenants' daughter. I ordered that any of these documents must be submitted no later than the end of business on May 13, 2015.

The landlord did submit several relevant documents including a copy of a letter dated January 23, 2015 addressed to the female tenant from the landlord advising that the money order dated January 21, 2015 named a payee that was different than the landlord's name. The landlord included a copy of the money order which is clearly made payable to a different party than the landlord.

The tenant's advocate also submitted a fax stating that the tenants had not been able to find any documentation to confirm any payments to the landlord from October 2014 to the present. However, she states the female tenant believes that she had "found where these may be and will confirm that either way by 5:00 p.m. May 13, 2015."

As no other documents or information was received from the advocate, I had an Information Officer contact the advocate by phone and she confirmed that no relevant receipts had been found.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began in October 2002 as a month to month tenancy for the monthly rent of \$900.00 due on the 1st of each month.

The landlord submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on March 5, 2015 with an effective vacancy date of March 20, 2015 due to \$4,666.01 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the months of October 2014, November 2014, December 2014, January 2015, February 2015, and March 2015 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by mail on March 5, 2015.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlord submits the tenants have also failed to pay any rent for the months of April and May 2015.

Despite the tenant's oral submissions regarding payments made to the landlord in this period, the tenants have provided no evidence to confirm any other payments than those that are documented in the tenant ledger submitted by the landlord that shows payments made on December 5, 2014; January 14, 2015; and February 27, 2015.

Based also on this ledger and in the absence of any other evidence from the tenants I find the landlord has established rental arrears in the amount of \$6,466.01.

Analysis

I have reviewed all evidence and testimony and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on March 10, 2015 and the effective date of the notice was March 20, 2015. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenants are conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Despite the tenant's oral submissions regarding payments made to the landlord in this period, the tenants have provided no evidence to confirm any other payments than those that are documented in the tenant ledger submitted by the landlord that shows payments made on December 5, 2014; January 14, 2015; and February 27, 2015.

Based also on this ledger and in the absence of any other evidence from the tenants I find the landlord has established rental arrears in the amount of \$6,466.01.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$6,516.01** comprised of \$6,466.01 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: May 15, 2015

Residential Tenancy Branch

