



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HomeLife Glenayre Chilliwack Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on April 2, 2015 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the tenant via registered mail at the address noted on the application. A Canada Post tracking number and receipt was provided as evidence of service.

The landlord submitted a copy of the envelope for the mail sent to the tenant. The envelope was marked as sent by registered mail to the rental unit address. The mail is stamped by Canada Post as unclaimed by the tenant. The mail was then returned to the landlord.

Section 90 of the Act deems registered mail is served on the fifth day after mailing. A refusal to retrieve registered mail does not allow a party to avoid service or form a basis for review.

Therefore, I find documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary Order for unpaid rent?

Background and Evidence

The landlord provided a copy of a decision issued by an arbitrator on October 29, 2014. The arbitrator considered the landlord's application requesting an Order of possession based on a July 10, 2014 10 day Notice to end tenancy for unpaid rent and unpaid rent. The arbitrator determined that there was insufficient evidence to establish that a tenancy existed. The application was dismissed with leave to reapply.

The landlord submitted a copy of an Order issued by an arbitrator on September 2, 2009. That Order, naming the same tenant and rental unit address found that the landlord was entitled to payment of \$250.00 by the tenant. During the hearing the decision related to this Order was viewed. The landlord had a copy of the decision before him. The September 2, 2009 decision concluded that a tenancy had been reinstated, that rent was \$700.00 per month including utilities.

The landlord was not acting as property manager in 2009 and recently became aware of the past decision and findings made. The property owner lives out of the country.

The landlord has requested an Order of possession based on the 10 day Notice to end tenancy issued on July 10, 2014. The Notice has an effective date of July 24, 2014.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$7,200.00 within 5 days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within 5 days.

The Notice was posted to the tenant's door on July 10, 2014 by the agent. The application for dispute resolution has an error indicating the Notice was posted on August 1, 2014. The landlord said that several weeks after he posted the Notice he went to the rental unit. The Notice was still posted to the door. The landlord spoke with the tenant who told him he had read the Notice and then put it back on the door. The tenant said he was not going to pay rent or move out.

The landlord said that no rent has been paid since August 2012. The landlord has claimed a sum for unpaid rent that is just below \$5,000.00. The landlord did not wish to pay an additional filing fee when the chance of receiving payment is not high. The landlord said the tenant owes much more than that claimed.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3rd day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on July 13, 2014.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on July 13, 2014, I find that the earliest effective date of the Notice is July 23, 2014.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on July 24, 2014, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending 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; therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; July 24, 2014.

In the absence of evidence to the contrary, I find that the tenant has not paid rent to July 24, 2014 and per diem rent owed beyond the effective date of the Notice. Therefore I find that landlord is entitled to compensation in the sum of \$4,999.00 for rent of \$700.00 per month and per diem rent owed between November 2014 and May 2015 inclusive. I have calculated per diem rent to the end of May 2015 to allow time for enforcement of an Order of possession.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution..

The landlord has been granted an Order of possession that is effective two days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order in the sum of \$5,049.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 12, 2015

Residential Tenancy Branch

