



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 487559 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, on what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

The month-to-month tenancy commenced November 1, 2013. The monthly rent of \$900.00 is due on the first day of the month. The tenants paid a security deposit of \$450.00. There is a written tenancy agreement.

The landlord testified that on April 17, 2015, they issued and personally served a 10 Day Notice to End Tenancy for Non-Payment of Rent.

The tenant testified that he found the notice on the ground beside the front door on April 17. He said the notice was not signed nor was the box indicating the method of service checked off. As the notice was not signed he thought that it was not effective so he ignored it.

The second page of the notice contained the following information:

- “The tenant can make an application for dispute resolution within 5 (five) days after receiving the 10 Day Notice to End Tenancy (form RTB-30). . .
- The tenant who accepts this notice must move out by the date set out on page 1 of this notice or sooner.
- An error in this notice or an incorrect move-out date does not necessarily make the notice invalid.”

The tenant testified that he had been served with a 10 Day Notice to End Tenancy for Non-Payment of Rent previously. He ignored it and nothing happened.

The landlord testified that he made sure the notice was signed before it was served. The copy filed in evidence by the landlord is of a signed notice.

The tenants received the Application for Dispute Resolution and Notice of Hearing by registered mail on May 19, 2015. The Notice of Hearing contains the following information:

“Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.”

The information sheet included with the Application for Dispute Resolution and Notice of Hearing explain that a respondent must serve and submit evidence so that other receive it not less than 7 days before the hearing. The tenant had until June 16 to serve and file any evidence within the required time line.

The tenant testified that he went to the Government Agent's Office on June 15 to file a dispute and evidence. One of the documents he wanted to file was his unsigned copy of the notice to end tenancy. He testified that the staff refused to accept the documents and told him to tell the arbitrator his story. The tenant testified that he did not attempt to file any evidence earlier because the notice was not valid.

The landlord testified that they have not received a rent payment since the tenants paid the security deposit. Although the arrears of rent are greater than \$5000.00 they are limiting their claim to \$5000.00.

The tenant testified that he has paid the rent in cash but has never been given a receipt for any payment. He questioned why the landlord took so long to take any action if he has not been paying the rent.

The landlord responded that whenever they went to the rental unit to collect the rent the tenant refused to answer the door or otherwise avoided them. He also testified that they give other tenants receipts for cash payments and if this tenant had made a cash payment, they would have provided a receipt.

Analysis

Section 46(4) of the *Residential Tenancy Act* states that a tenant may, within five days of receiving a 10 Day Notice to End Tenancy for Non-Payment of Rent:

- pay the over due rent, in which case the notice has no effect; or,
- dispute the notice by making an application for dispute resolution.

Subsection (5) provides that a tenant who does not do either of these things within the five day time period is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

The effective date of this notice was stated to be April 30, 2015; which is the correct effective date if the notice was posted on the door or left in the mailbox on April 17.

Section 66(1) does allow an arbitrator to extend the time for filing an application to dispute a notice to end tenancy in exceptional circumstances but subsection (3) provides that any extension granted cannot be beyond the effective date of the notice.

If the tenants were of the opinion that they had been served with an invalid notice to end tenancy they should have filed an application disputing it. As they did not, they are bound by section 46(5). I find that the tenancy ended on April 30, 2015, and the landlords are entitled to an order of possession effective two days after service.

As mentioned earlier the tenant had until June 16 to file any evidence and be within the time limit for doing so. Many respondents serve and file evidence after the deadline for doing so has passed. Too often evidence is filed the day before the hearing. All late evidence is forwarded to the arbitrator who decides whether the late evidence will be considered or not. This is the first time I have heard of a government agent or a Residential Tenancy Branch employee refusing to accept on-time or late evidence.

In any event, the tenants were served with the application for dispute resolution on May 19 and had lots of time to file any evidence that would support their statement that they had paid the rent.

The tenant's evidence does not make sense to me and I do not accept his statement that they have paid the rent.

While the landlord did not file any written documentation regarding the rent it makes sense that if no rent payments have been made, there would be nothing to file.

I find that the arrears of rent from December 1, 2013 to June 1, 2015, inclusive, total \$17,100.00 (19 months X \$900.00), however, the landlord has limited their claim to \$5000.00.

I find that the landlord has established a total monetary claim of \$5050.00 comprised of arrears of rent in the amount of \$5000.00 and the \$50.00 fee paid to file this application. Pursuant to section 72(2) I order that the landlords retain the security deposit of \$450.00 in partial satisfaction of the claim and I grant the landlords a monetary order pursuant to section 67 for the balance of \$4600.00.

Conclusion

- a. An order of possession has been granted to the landlords. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.
- b. A monetary order has been granted to the landlords. If necessary, this order may be filed in the Small Claims Court and 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: June 30, 2015

Residential Tenancy Branch

