



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX OF NANAIMO PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction and Preliminary Matters

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent and a Monetary Order for unpaid rent. The Landlord initially applied for an Order by Direct Request on April 28, 2015. By decision made May 4, 2015, the Landlord's application was adjourned to a participatory hearing.

Both parties appeared at the hearing. The Landlord was represented by A.H., the Property Manager, and D.N. the Administrator. A.H. spoke on behalf of the Landlord. Both Tenants appeared and presented evidence on behalf of the Tenants. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing the Landlord confirmed that the Tenants paid the outstanding rent in increments such that at the time of the hearing, no amount of rent was owed and consequently the Landlord no longer requested a Monetary Order. Introduced in evidence were copies of receipts issued to the Tenants for "Use and Occupancy Only" as the Landlord wished to be clear that they were not reinstating the tenancy.

The Landlord confirmed that while the rent had been paid, it was not paid within the five days stipulated by section 46(4)(a) of the *Residential Tenancy Act*, such that the Landlord continued to seek an Order of Possession.

The Landlord also confirmed that the issue raised in the May 4, 2015 decision, namely the authority of the Property Management Company to act as agent for the property owner named on the rental agreement, had been addressed. Introduced in evidence was a copy of the Property Management Agreement dated August 27, 2012 between the registered property owner (the Landlord named on the residential tenancy agreement dated November 5, 2012) giving the Property Management Company (the Landlord named on the Application for Dispute Resolution) authority to represent the owner in all matters pertaining to the rental unit. Accordingly, I find that the Property Management Company has authority to act on behalf of the Landlord.

The Landlord confirmed that the Property Management Agreement was provided to the Branch and to the Tenants, the latter by registered mail. The Landlord stated that the Tenants did not claim the registered mail containing the property Management Agreement. It is noted that failure to accept, or refusal to accept, registered mail does not render service ineffective; accordingly, I find that the Tenants are deemed to have received this information.

Issues to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated the following: the tenancy began November 15, 2012; monthly rent was payable in the amount of \$1,700.00 on the 15th of the month; and a security deposit in the amount of \$850.00 was paid prior to the tenancy beginning. The Landlord confirmed that the rent had not been increased during the tenancy.

The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on April 17, 2015 indicating the amount of \$1,832.50 was due as of April 15, 2015 (the "Notice").

Introduced in evidence was a copy of the Proof of Service Notice to End Tenancy which confirms the Tenants were personally served with the Notice on April 17, 2015. Accordingly, I find that the Tenants were served with the Notice as of April 17, 2015.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, April 22, 2015. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

During the hearing, the Tenants alleged that the Landlord's accounting records were inaccurate. However, the Tenants failed to apply to dispute the notice, and failed to provide any evidence which would support the claim that the amount noted on the 10 Day Notice was inaccurate.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. This is not a rebuttable presumption.

Under section 26 of the Act, the Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenants have some authority under the Act to not pay rent. In this situation the Tenants had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an order of possession. During the hearing the Landlord confirmed that the Tenants had paid rent to July 14, 2015 and that they were agreeable to having the Order of Possession effective **July 14, 2015**. The Landlord must serve the Order on the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession effective July 14, 2015, which is the date agreed to by the Landlord.

This decision is final and binding on the parties, except as 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: June 18, 2015

Residential Tenancy Branch

