



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, OPL, OPC, OPB, MT, CNC, MNDC, FF

Introduction

This was a cross-application hearing.

On May 11, 2015 the tenant applied requesting more time to cancel a 10 day Notice to end tenancy for unpaid rent that was issued on May 6, 2015. The tenant requested return of the filing fee cost.

On May 12, 2015 the landlord applied via the Direct Request Process; that application was replaced on May 15, 2015 with an application requesting an end to the tenancy for a variety of reasons, including unpaid rent; compensation for damage or loss under the Act and to recover the filing fee cost.

The landlord provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the application. The registered mail information was not before the landlord. The landlord was given until noon on June 29, 2015 to submit the Canada Post tracking information for the registered mail that was sent to the tenant's rental unit address.

A Canada Post tracking number and receipt was provided as evidence of service. The mail was sent on May 15, 2015

These documents are deemed to have been served effective May 20, 2015 in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing in response to the landlord's application.

The tenant did not attend the hearing in support of his own application.

Preliminary Matters

The landlord confirmed that they have issued only one Notice to end tenancy, for unpaid rent; therefore, the balance of the requests indicated on the application for ending the tenancy will not be considered.

The landlord confirmed that the monetary claim represented two months' rent. Therefore, the application was amended to reflect a claim for May and June 2015 rent and loss of rent revenue. As rent is the most basic term of a tenancy the amendment is not prejudicial to the tenant; further, the application sets out a claim for two months' rent but mentions only May 2015.

Evidence was given to the tenant with the application. A further 12 pages of evidence was personally served to the tenant on June 9, 2015 by Z.F. with his father K.F. present as a witness. K.F. was called into the hearing and provided affirmed testimony that he witnessed his son serve the tenant with documents approximately two weeks ago.

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 and loss of rent revenue?

Background and Evidence

The tenancy commenced on August 1, 2014. The landlord intended that this would be a one year fixed term but the agreement does not clearly set that term out. Rent is \$1,900.00 per month, due on the first day of each month. A security deposit in the sum of \$950.00 was paid. A copy of the tenancy agreement supplied as evidence was illegible.

The landlord stated that on May 6, 2015 at 1:30 p.m. a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of May, 2015 was personally served to the tenant, at the rental unit. A proof of service document signed by B.N. and witness to service, D.N., was supplied as evidence confirming service of the Notice. The Notice did not include the effective day; only the month and year.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,900.00 within five 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 five days.

The tenant disputed the Notice but failed to attend the hearing in support of the application. The landlord confirmed receipt of the tenant's application.

The tenant has not paid May or June 2015 rent in the sum of \$3,800.00; the sum claimed by the landlord.

Analysis

Section 90 of the Act stipulates that a document given personally is deemed served on the day of personal delivery. Therefore, based on the proof of service document, I find that the tenant received the Notice to end tenancy on May 6, 2015.

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 May 6, 2015, I find that the earliest effective date of the Notice is May 16, 2015.

Director's orders: notice to end tenancy

- 68** (1) *If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that*
- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and*
 - (b) in the circumstances, it is reasonable to amend the notice.*
- (2) *Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,*
- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or*
 - (b) set aside or amend a notice given under this Act that does not comply with the Act.*

As the tenant understood he must dispute the Notice I find that he also understood the intent of the Notice. Therefore, I find that the tenant would have known that the effective was missing and that it is reasonable to amend the Notice to include an effective date of May 16, 2015.

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 May 16, 2015, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five 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. The tenant disputed the Notice but did not attend the hearing in support of his application. Therefore, as there is no evidence before me that rent has been paid, I find pursuant to section 46(5) of the Act that the tenant accepted that the tenancy has ended on the effective date of the Notice; May 16, 2015.

Further, as the tenant applied to cancel the Notice and failed to attend the hearing the landlord would be entitled to an Order of possession based on an oral request, pursuant to section 55 of the Act.

In the absence of evidence to the contrary I find that the tenant has failed to pay rent to May 16, 2015 and rent revenue on a per diem basis from May 17 to June 29, 2015, inclusive in the sum of \$3,800.00. As the landlord will not obtain possession of the rental unit before the end of June 2015 I find the landlord is entitled to loss of rent revenue for the additional day of June, to the 30th.

As the landlords' application has merit I find, 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 \$3,850.00. 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 for unpaid rent.

The landlord is entitled to compensation for loss of rent revenue.

The landlord is entitled to filing fee costs.

The tenants' application is dismissed.

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: July 07, 2015

