



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, CRN, OPT, FF

Introduction

This was a cross-application hearing.

On June 4, 2015 the tenants applied to cancel a 10 day Notice to end tenancy for unpaid rent and to obtain an Order of possession for the unit. A copy of the Notice in dispute was not supplied with the tenants' application.

On June 30, 2015 the landlord submitted an application requesting an Order of possession for unpaid rent, a monetary Order for unpaid rent and to recover the filing fees from two tenant respondents.

The landlord and male tenant were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The male tenant did not dispute service of documents given by the landlord.

Preliminary Matters

The landlord said they were not served with Notice of the tenant's application. The male tenant present at the hearing was not aware of the application made by his co-tenant.

The landlord provided affirmed testimony that on July 2, 2015 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the female tenant via registered mail to the address noted on the Application. A Canada Post tracking number was provided as evidence of service. The Canada Post tracking information indicates that the female tenant has not retrieved the mail and it will be returned to the landlord. The address used for service was the same as the service address supplied on the tenants' application.

The landlord confirmed that they have not checked the rental unit since the June 18, 2015 effective date of the Notice passed. The landlord is not able to confirm that the female tenant is residing in the rental unit or if she vacated as a result of the Notice. However, the female tenant has disputed the Notice, indicating the tenant was not intending to vacate.

A failure to claim registered mail does not allow a party to avoid service. Therefore, I find these documents are deemed to have been served to the female co-tenant effective July 7, 2015 in accordance with section 89 and 90 of the Act; however the female tenant did not appear at the hearing. My finding related to the tenants' application will be considered in the analysis section of the decision.

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

There was no dispute that this tenancy commenced in 2002. The tenant and his spouse had attempted to purchase the property but when that purchase ran into financial problems the male tenants' parents purchased the home.

The parties agreed that after the purchase was completed a verbal tenancy agreement was made for payment of rent, due on the first day of each month. There was no dispute that rent is currently \$2,310.00 per month.

The parties confirmed that the male tenant is the son of the landlord. The landlord confirmed that the tenancy did not include any purchase terms for the residential property.

The landlord issued two 10 day Notices to end tenancy for unpaid rent. The second Notice was issued on June 3, 2015 and served to the tenants by posting to the rental unit door on that date. The male tenant confirmed he received a copy of that Notice by June 5, 2015. The Notice had an effective date of June 18, 2015.

The Notice indicated that the tenants' owed rent in the sum of \$12,835.00. A rent payment ledger was supplied as evidence setting out rent owed between May 2014 and June 2015.

During the hearing I explained that Residential Tenancy Branch policy suggests that two or more tenants who rent the same property under the same tenancy agreement are co-tenants. Co-tenants are jointly and severally liable for debts and have equal rights under the tenancy agreement.

The male co-tenant no longer resides at the rental unit property but has not ended the tenancy in accordance with the Act, by giving proper written Notice.

The male tenant said he did not dispute the claim and agreed an Order of possession and monetary Order should be issued.

Counsel requested compensation for loss of rent revenue for July 2015.

Mutually Settled Agreement

The tenant agreed that the landlord is entitled to a monetary Order in the sum of \$12,835.00 for rent owed from May 2014 to June 2015 inclusive.

The tenant agreed the landlord should be issued an Order of possession effective two days after service.

Analysis

Opportunity to settle dispute

63 (1) *The director may assist the parties, or offer the parties an opportunity, to settle their dispute.*

(2) *If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.*

Therefore, based on the mutually settled agreement of the parties I find, in support of that agreement that the tenancy ended on the effective date of the Notice, June 18, 2015. The male co-tenant has confirmed receipt of the most recent Notice ending tenancy and may do so on behalf of both tenants.

As the tenancy has ended, in support of the mutually settled agreement, I find that the landlord is entitled to an Order of possession effective two days after service to the tenants. The male tenant confirmed his service address remains the postal box indicated on the landlords' application.

As the tenants' application for dispute resolution indicated the tenants were not planning on vacating the rental unit I find, in accordance with section 8.4 of the Residential Tenancy Branch Rules of Procedure that the landlords' application is amended to include the loss of per diem rent revenue to today's date. Rent is the most basic term of a tenancy; therefore, I find it reasonable to include this loss as compensation and that to do so does not prejudice the tenants.

Therefore, based on the mutually settled agreement of the parties and section 67 of the Act, I find the landlord is entitled to compensation for rent owed from May 2014 to June 18, 2015, inclusive and per diem rent from June 19 to July 24, 2015, inclusive totaling \$14,657.80. Per diem rent has been calculated in the sum of \$75.95 per day.

As the tenant who submitted the application did not attend the hearing in support of the application and did not complete service of the application to the landlord I find the tenants' application is dismissed without leave to reapply. The effective date of the Notice has now passed and the tenant present at the hearing has agreed to settle the matters.

As the parties reached a mutually settled agreement filing fees are declined.

Based on the mutually settled agreement and my finding I grant the landlord a monetary Order in the sum of \$14,657.80. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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

Conclusion

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

The tenants' application is dismissed.

This decision is final and binding on the parties 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 24, 2015

Residential Tenancy Branch

