



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPR, MNDC, MNR, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for an order of possession for the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice"), a monetary order for unpaid rent and for money owed, for authority to retain the tenant's security deposit, and to recover the filing fee.

The landlord and his agents attended; the tenant did not attend the telephone conference call hearing.

The landlord's agent gave evidence that they served the tenant with the Application for Dispute Resolution and Notice of Hearing by handing the documents to the tenant's girlfriend who lives with the tenant, on May 21, 2015. The landlord's agent also submitted that the girlfriend was a tenant as well, but that person was not named on the landlord's application and they did not know her name.

The landlord's agents were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-Section 89(1) of the Residential Tenancy Act requires that an application for dispute resolution be served upon the respondent (the tenant in this case) by leaving it with the person or by registered mail.

For an order of possession for the rental unit, however, under section 89(2) a landlord is permitted to serve the tenant their application for dispute resolution by other methods, and in this case, by leaving the documents at the tenant's residence with an adult who apparently resides with the tenant.

As the landlord served the tenant the notice of the dispute resolution proceeding and application for dispute resolution by leaving the documents at the tenant's residence with an adult who apparently resides with the tenant, based upon the submissions of the landlord, I find the tenant was served notice of this proceeding and the landlord's application in a manner complying with section 89(2) of the Act and the matter proceeded on the portion of the landlord's application for an order of possession for the rental unit only.

I dismiss that portion of the landlord's application for dispute resolution seeking monetary compensation, with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent and to recover the filing fee?

Background and Evidence

The landlord gave evidence that this tenancy began on May 1, 2015, monthly rent is \$850.00, due on the first day of the month, and a security deposit of \$425.00 was paid by the tenant at the beginning of the tenancy.

The landlord's agent gave evidence that on May 14, 2015, he served the tenant with the Notice, leaving it with the tenant and his girlfriend, listing unpaid rent of \$850.00 as of May 1, 2015. The effective vacancy date listed on the Notice was May 24, 2015.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenant did make 3 installment payments toward the outstanding rent during the month of May, but not all was paid within the 5 days of receipt. Additionally, the tenant has not paid rent for June or July 2015, according to the landlord.

I have no evidence before me that the tenant applied to dispute the Notice.

Analysis

Based on the undisputed evidence of the landlord, I find the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant.

I also allow the landlord to recover the filing fee for this application of \$50.00.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

The portion of the landlord's application for a monetary order has been dismissed, with leave to reapply.

At the landlord's request, I allow the landlord to retain \$50.00 from the tenant's security deposit to recover the filing fee.

Conclusion

The portion of the landlord's application for an order of possession for the rental unit has been granted.

The portion of the landlord's application seeking monetary compensation is dismissed, with leave to reapply.

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: July 8, 2015

Residential Tenancy Branch

