



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 659804 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This was the reconvened hearing dealing with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking 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 recovery of the filing fee paid for this application.

This hearing began on August 13, 2015, and the parties testified in support of and in response to the landlord's application.

An Interim Decision which was entered on August 13, 2015, should be read in conjunction with this Decision and further, it is incorporated by reference herein.

The parties were informed at the original hearing that the hearing would be adjourned in order to allow the tenant to submit proof that the monthly rent for June, July, and August had been paid. During the period of adjournment, the tenant submitted three documents, all printouts of payments generated by the social assistance ministry.

At the reconvened hearing, the landlord's agent (hereafter "landlord") and tenant both attended and denied receiving my Interim Decision; the tenant was thus unaware of my instructions in the Decision to send any evidence to the Residential Tenancy Branch ("RTB") as well as to the landlord. The tenant therefore did not send her evidence to the landlord. The evidence was 3 documents generated by the social assistance ministry showing rent payments of \$600.00 to the landlord/owner for June, July, and August.

This hearing proceeded on the discussion surrounding the tenant's evidence and to conclude the landlord's allegations that the monthly rent has not been paid by the tenant.

The landlord and tenant gave further affirmed testimony in support of and in response to the landlord's application.

I have reviewed all oral and documentary 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.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit, a monetary order for unpaid rent, and to recovery of the filing fee paid for this application?

Background and Evidence

The background details of this tenancy and the landlord's application are contained in the Interim Decision. As noted, the landlord submitted that he had not received the monthly rent for June, at the hearing on August 13, 2015; at the reconvened, the landlord confirmed that the monthly rent for June was paid, the date for such receipt was not clearly stated by the landlord and no receipt was provided. The landlord denied receiving the monthly rent for July and August.

Further into the hearing, the landlord confirmed that he worked for the named corporate landlord managing this residential property, and that the owner of the named corporate landlord receives the rent cheques from the social assistance ministry on behalf of the tenant. The landlord here stated that the owner did inform him that the monthly rent for June was paid; the landlord then stated that he did not "get" the rent cheques for July and August.

The landlord has not submitted accounting records or a tenant ledger showing any rent payments from this tenant. The landlord's monetary claim is \$1800.00, comprised of alleged unpaid rent for June, July, and August, or \$600.00 each.

The landlord's relevant documentary evidence included a copy of the Notice and page 1 of a 2 page proof of service of the Notice.

The tenant submitted that the three records she produced confirm that the rent for June, July and August were sent to the landlord by the social assistance ministry and cashed.

Analysis

Pursuant to section 46(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

In the case before me, I find the landlord submitted insufficient evidence to show that he served the tenant with the Notice or that the tenant owed rent when the Notice was allegedly served. In reaching this conclusion, I relied upon the fact that the landlord submitted into evidence only the first page of a 2 page proof of service, on the form supplied by the RTB to landlords. It is on the 2nd page of this form that service of a document is confirmed by a witness statement and signature or other proof.

Additionally, I also find the landlord submitted insufficient evidence to support that on the day the Notice was allegedly served, the tenant owed rent for June. At the original hearing, the landlord submitted that the rent for June had not been paid; however, when confronted with the tenant's evidence that the rent cheque had been sent to the landlord/owner and cashed, the landlord agreed that the owner informed him that the rent for June was paid. There was no evidence from the landlord as to when this payment was made and the landlord was unable to refute the tenant's statement that the rent cheques for any particular month is mailed by the social assistance ministry by the 25th day of the month preceding.

At the reconvened hearing, the landlord made the statement that he did not "get" the rent for July and August. I find this statement intentionally misleading as the landlord here confirmed that he does not receive the tenant's rent cheques at all; rather the rent cheques are mailed to the owner and the landlord here would not be in a position to "get" the cheques. I took note of the fact that the landlord never claimed that the owner did not receive the rent cheques for July and August, 2015, or that rent was unpaid. Further there was no evidence from the landlord or owner as to when the rent cheque for June was received or any other accounting records.

As the landlord provided two different versions of events at the original and reconvened hearing, I could not rely on their evidence to prove that the tenant owed rent on the day the Notice was served on the tenant, if it was at all. Additionally, the landlord was unable to refute the tenant's testimony that the records from the social assistance ministry show rent for June, July, and August were paid directly to the landlord/owner.

Due to the above, I find the landlord has submitted insufficient evidence to support their claim that the tenant failed to pay rent for June 2015 or that the tenant owed rent on the date the Notice was allegedly served on the tenant.

I therefore cancel the Notice, dated June 2, 2015, and find that it is not valid, not supported by the evidence, and has no force or effect.

Additionally, due to the landlord's inconsistent and inconclusive evidence, I find the landlord submitted insufficient evidence to support their claim for unpaid rent for July and August as I was not convinced that the tenant has failed to pay rent. I therefore dismiss their monetary claim for unpaid rent for those months.

As I have cancelled the Notice and determined that it has no force or effect, I dismiss their request for an order of possession for the rental unit and a monetary order for unpaid rent for June, July and August 2015.

Due to the above, I dismiss the landlord's application, without leave to reapply.

Conclusion

The landlord's application seeking an order of possession and a monetary order for unpaid rent is dismissed.

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: August 19, 2015

Residential Tenancy Branch

