



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was convened to address a claim by the landlords for an order of possession and a monetary order. Only the landlords participated in the conference call hearing.

The matter was originally set to be determined by way of direct request proceeding, which is a non-participatory proceeding. The arbitrator in that process determined that the landlords had not served the notice to end tenancy in a manner required for that process, and set the matter to be heard in a participatory hearing. The arbitrator issued a decision on July 23, 2015 in which he directed the landlords to serve enclosed notices of hearing on the tenant.

At the hearing on this date, the landlord MD testified that after the arbitrator rendered his decision, the tenant telephoned him to advise that he had received the decision in the mail from the Residential Tenancy Branch. MD testified that he understood that the tenant had received the notice of hearing, which is the document containing the date and time of the hearing as well as the phone number and passcode to access the hearing. MD testified that because he believed that the tenant had the same documents he had been sent, he did not serve the notice of hearing on the tenant.

MD further testified that on or about September 27, he placed a note on the tenant's door reminding him about the hearing and providing the date, time, telephone number and passcode. On September 29, he received a telephone call from the tenant in which the tenant advised that he had telephoned that morning and spent an hour on hold, but was unable to access the hearing. The landlord again told the tenant that the hearing was taking place on September 30.

Ordinarily, I would not proceed with this hearing without confirmation that the tenant had received the physical notice of hearing. However, in this case, I am satisfied that the tenant was aware of the hearing, he knew the subject matter of the hearing and the

landlord provided him with all of the information with respect to accessing the hearing. The fact that the tenant was able to telephone into the system and be placed on hold the day before the actual hearing tells me that the information provided by the landlord was correct and the only reason the tenant was unable to connect to this or any other hearing at that time, was because there was no hearing scheduled to take place at 9:00 on September 29 using those codes.

I was satisfied that the tenant had knowledge of the hearing and opportunity to access the conference call and the hearing proceeded in his absence.

Issue to be Decided

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The landlords' undisputed evidence is as follows. The tenancy began on or about April 1, 2011 and rent was set at \$1,100.00, payable in advance on the first day of each month. The tenant failed to pay rent in the months of June and July 2015 and on July 11, the landlords served the tenant with a notice to end tenancy for unpaid rent (the "Notice") by placing the Notice in the tenant's mailbox.

Analysis

I accept the landlords' undisputed testimony and I find that the tenant was obligated under the terms of the tenancy agreement to pay \$1,100.00 in rent each month and did not pay rent for the months of June and July 2015. I find that on July 11, the landlords placed the Notice in the tenant's mailbox. Documents served in this fashion are deemed received 3 days later and I find that the tenant received the Notice on July 14. The tenant did not pay the outstanding rent within 5 days of receiving the Notice and did not apply for dispute resolution to dispute the Notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlords are entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary order, I find that the landlords are entitled to recover the unpaid rent for the months of June and July and I grant the landlord an order under section 67 for

\$2,200.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlords are granted an order of possession and a monetary order for \$2,200.00.

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: September 30, 2015

Residential Tenancy Branch

