



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, O

Introduction

On September 9, 2015 a hearing was conducted via conference call between these two parties. The landlord attended the hearing and provided undisputed affirmed testimony. The tenant did not attend. Both parties did not submit any documentary evidence. The landlord served the tenant in person on August 21, 2015 with the notice of hearing package seeking an order of possession and a monetary order for unpaid rent and to recover the filing fee. The landlord was granted an order of possession and a monetary order for unpaid rent and recovery of the filing fee. The tenant applied for a review of this decision. The arbitrator ordered the decision and accompanying order suspended pending a review hearing for the landlords' application.

This is a review hearing granted for the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord indicated that he did not understand everything because of language difficulties and asked if he could have R.C. assist him for the hearing. The hearing proceeded with the assistance of R.C. who interpreted on behalf of the landlord at the landlord's request. The landlord indicated that he now understood the proceedings with the assistance of R.C. his interpreter.

The tenant stated that he served the landlord with the notice of a review hearing and a copy of the review decision on September 27, 2015 by placing it in the landlord's mailbox. The landlord stated that he did not receive the notice of a review hearing package, but that he was aware of the review decision as he stated that he had contacted the Residential Tenancy Branch for the particulars. The landlord stated that he was still able to proceed with the review hearing.

The tenant stated that he did not file any documentary evidence. The landlord stated that he filed a copy of the 10 Day Notice issued on July 1, 2015 and some photographs regarding damage. The tenant did not receive any documentary evidence from the landlord. A review of the file and a search of the online database showed no evidence submitted by the landlord. The landlord stated that he submitted the documentary evidence in person at the Burnaby Branch Office. A search of the log sheet for in person submissions of evidence showed no entries made for the landlord's claim. As the tenant did not receive any documentary evidence and the landlord was unable to substantiate submissions of any documentary evidence, the review hearing proceeded in the absence of any documentary evidence by either party.

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

The tenant stated from the outset that he was not served with a 10 Day Notice as shown in his review application. The landlord stated that he served the 10 Day Notice 2 months prior to the hearing (making it September 2015) in person while the tenant sat in his car. The landlord clarified when asked for a date that it was in August 2015. The landlord later clarified that the same 10 Day Notice was served in October 2015. The landlord was unable to provide any details of the 10 Day Notice as he stated that all of his material was at home and he was at work.

Analysis

The arbitrator in the original hearing on September 9, 2015 wrote,

I find that the 10 Day Notice to End Tenancy was personally served on the Tenant on July 1, 2015. Further I find that the Application for Dispute Resolution/Notice of hearing was personally served on the tenant on August 21, 2015.

I find that as the landlord was the only party present and no documentary evidence was provided at that time that this was as a result of the landlord's direct testimony. In this review hearing, the landlord provided direct testimony that the 10 Day Notice was served 2 months ago(September 2015), then clarified the date to August 2015 and then clarified the date a second time in October 2015.

Section 88 of the Act establishes how a landlord may serve a tenant with a 10 Day Notice. It reads in part as follows:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(a) by leaving a copy with the person;

The tenant has disputed that he did not receive any service of the 10 Day Notice served July 1, 2015. The landlord has provided inconsistent and conflicting testimony of when the 10 Day Notice was served. On this basis, I find that the landlord has failed to provide sufficient evidence to satisfy me that the 10 Day Notice noted as being served on July 1, 2015 was properly served. As such, that notice is set aside and the tenancy shall continue. The landlord's application is dismissed without leave to reapply.

Conclusion

The landlord's application is dismissed without 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: October 29, 2015

Residential Tenancy Branch

