



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

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an Order of Possession and a monetary order for unpaid rent or utilities by way of the Direct Request process. The director provided an Interim Decision on March 11, 2016 which adjourned the application to this participatory hearing. The landlords were provided with the Interim Decision and Notice of Reconvened Hearing by the Residential Tenancy Branch, and the director ordered the landlords to serve a copy of each to the tenant along with all other required documents within 3 days of receiving the Interim Decision and Notice of Reconvened Hearing.

The named landlord attended the hearing, gave affirmed testimony and also represented the landlord company. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant attended the call. The landlord testified that the Interim Decision and Notice of Reconvened Hearing were received on March 18, 2016 and the documents were personally served to the tenant on March 19, 2016. I accept the testimony of the landlord and I am satisfied that the tenant has been served in accordance with the Decision of the director and the *Residential Tenancy Act*.

During the course of the hearing the landlord advised that the tenant has moved out of the rental unit, the landlord has possession of the rental unit, and the application for an Order of Possession is withdrawn.

Issue(s) to be Decided

The issue remaining to be decided is:

- Have the landlords established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this month to month tenancy began on November 3, 2015 and the tenant moved out on March 26, 2016. Rent in the amount of \$750.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$375.00 which is still held in trust by the landlords, and no pet damage deposit was collected. A copy of a tenancy agreement has been provided, however it does not name the parties contained in the Landlord's Application for Dispute Resolution.

The landlord also testified that tenant failed to pay rent when it was due for February, 2016 and the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 3, 2016. A copy has been provided and it names the parties consistently with the Landlord's Application for Dispute Resolution. The notice is dated February 3, 2016 and contains an effective date of vacancy of February 17, 2016 for unpaid rent in the amount of \$750.00 that was due on February 1, 2016. The tenant has not paid any rent since the issuance of the notice and the tenant is now in arrears the sum of \$1,500.00 for February and March, 2016. The landlords seek a monetary order in that amount in addition to the \$100.00 filing fee for the cost of this application.

Analysis

I have reviewed the tenancy agreement and the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. I have also reviewed the Interim Decision of the director which states, in part:

"The manner in which the copy of the tenancy agreement provided by the landlord is drafted demonstrates that it does not clearly identify the parties that entered into the tenancy agreement as landlord and tenant, as the tenancy agreement contains conflicting information with respect to the parties identified as landlord and tenant."

...

I find that there are deficiencies with respect to the manner in which the tenancy agreement has been drafted, as the names provided for the tenants on the Application for Dispute Resolution by Direct Request form are not consistent with the information included on the tenancy agreement."

The landlord did not explain the inconsistencies during the course of the hearing. Where a party makes a monetary claim against another party, the onus is on the claiming party to satisfy the claim. The onus is on the landlords to establish that parties

entered into a tenancy agreement, and the tenancy agreement specifically names someone other than the named tenant as a tenant. I note that the signature page of the tenancy agreement contains a tenant's name that is similar to the tenant's name in the landlord's application for dispute resolution, however the first name is spelled differently, and in my opinion would even be a different pronunciation.

Since the landlords have withdrawn the application for an Order of Possession, the landlords are only required to establish that the tenant as named in the Landlord's Application for Dispute Resolution agreed to the payment of rent and failed to pay it. Since the landlords have provided a copy of a tenancy agreement, and the tenant as named in the application is different than the tenant named in the tenancy agreement, I find that the landlords have failed to establish that the tenant named in the Landlord's Application for Dispute Resolution has entered into a tenancy agreement with the landlords.

The landlords' application is hereby dismissed.

Conclusion

For the reasons set out above, the landlords' application for an Order of Possession is hereby dismissed as withdrawn.

The landlords' application for a monetary order for unpaid rent or utilities is hereby 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: April 26, 2016

Residential Tenancy Branch