



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VAM ENTERPRISE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 0943 in order to enable the tenants to connect with this teleconference hearing scheduled for 0930. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issue – Service

The agent testified that he served the tenants with the dispute resolution package on 8 May 2016 by posting the package to the tenants' door.

Service by posting the dispute resolution package is contemplated for the purposes of an order of possession (subsection 89(2) of the Act), but not contemplated for the purposes of a monetary order (subsection 89(1) of the Act). On the basis of this evidence, I am satisfied that the tenants were deemed served with the dispute resolution package pursuant to subsection 89(2) and paragraph 90(c) of the Act. This means that I can determine the landlord's application for an order of possession, but

cannot hear the landlord's application for a monetary order. As such, the landlord's application for a monetary order is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

The agent testified that he served the tenants with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 24 April 2016. The agent testified that he knocked on the door, but the tenants would not open it. The agent testified that he saw the tenants through an open window. The agent testified that he put the 10 Day Notice through the window on to a table and told the tenants that they were being served with the notice. On the basis of this evidence, I am satisfied that the tenants were personally served with the 10 Day Notice pursuant to section 88 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 December 2015. Monthly rent of \$900.00 is due on the first. The landlord holds a security deposit in the amount of \$440.00.

On 24 April 2016 the landlord served the 10 Day Notice to the tenants. The 10 Day Notice was dated 23 April 2016 and set out an effective date of 3 May 2016. The 10 Day Notice set out that the tenants failed to pay \$1,095.00 in rent that was due on 1 April 2016 and \$900.00 in rent that was due 1 May 2016. The rental arrears included \$195.00 from March's rent.

The agent testified that the landlord has not received any payments towards the rent arrears. The agent testified that he is not aware of any reason that would entitle the tenants to deduct any amount from rent. The agent testified that the current rent arrears are \$2,985.00, including June's rent.

Analysis

Pursuant to section 46 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 tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenants' failure to take either of these actions within five days led to the end of their tenancy on 4 May 2016, the corrected effective date of the notice. This required the tenant to vacate the premises by 4 May 2016. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

The remainder of the landlord's application is dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 13, 2016

Residential Tenancy Branch