



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Codes: CNR, MNSD, OPR, MNR, MNSD, MNDC, FF

Introduction:

This was an application by the tenant to cancel a Notice to End the Tenancy for Non-Payment of Rent dated June 13, 2016 and a Landlord Use Notice to End a Tenancy dated April 13, 2016. The landlord by way of cross application sought an Order for Possession and Monetary Order based upon the same Notices. A hearing was conducted in the presence of DT for the landlord and only DD of the tenants.

Service Issues:

The landlord DT testifies that she hand delivered the Notice to End the Tenancy dated June 13, 2016 on that day and the other Notice dated April 13, 2016 was hand delivered on that day. The tenant DD testified that he received the April 13, 2016 Notice on June 2, 2016 after meeting with the other landlord who forgot to give it to him and he received the Notice for Non-Payment of Rent on June 13, 2016.

DT testified that she sent two copies of the Application for Dispute Resolution by courier on July 6, 2016 but only the tenant DD signed for his copy and the other copy had not yet been delivered to AD the other tenant. DD testified that AD moved out on July 15, 2016 and he had not given her the notice of delivery card and deliberately not advised her of the hearing.

I find that the tenant DD and AD had been served with the Notice to End the Tenancy for Non payment of Rent on June 13, 2016, and I accept the tenant DD's evidence that he was served with the Landlord Use Notice on June 2, 2016.

I find that both tenants were served with the application for an Order for Possession pursuant to section 88 of the Act which has different service requirement and states that service on one adult is sufficient for all other adults residing in the unit ; however I find that only DD was served with the application for a monetary Order pursuant to section 89 of the Act as it is clear that AD never received the documents and that section requires personal service of each respondent. I have dismissed the landlords' application for a monetary Order with leave to reapply as against AD.

Issues:

Is the tenant entitled to a cancellation of the Notices?

Are the landlords entitled to an Order for Possession and a Monetary Order for unpaid rent?

Background and Evidence

The landlord DT testified that the tenant did not pay rent from February 2010 to date and that the exact amount owing is \$ 19,000.00 although the landlords only claimed the sum of \$ 17,000.00 in their application. The DT testified that the tenancy began on July 1, 2008 with rent in the amount of \$ 2,000.00. DT testified that the tenants paid a security deposit amounting to \$ 1,000.00 on July 1, 2008. DT asked for an Order for Possession and a recovery of revenue amounting to \$ 19,000.00.

DT also testified that the tenants were served with a Landlord Use Notice to End the Tenancy as the Unit was sold and the purchaser required vacant possession. The landlord had not submitted any supporting evidence.

DD admitted not paying the rent because he had health and financial difficulties.

Analysis:

The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. Here the tenant DD admitted not paying rent. Accordingly I must dismiss the application to cancel the Notice to End the Tenancy for Non-Payment of Rent dated June 13, 2016. Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. I have dismissed the tenants' application and upheld the Notice. I order pursuant to section 44 of the Act that the tenancy shall end two days after service on the tenants.

The application to cancel the Landlord Use Notice is moot as the tenancy is ending because of the non-payment of rent. I have dismissed that application. However because the landlord issued the Notice, compensation equivalent to one month's rent is required to be given to the tenants pursuant to section 51(1) of the Act.

I find that the landlord has established a claim for unpaid rent totalling \$ 19,000.00 for however I deduct from that the sum of \$ 2,000.00 representing compensation that the landlord must pay to the tenants pursuant to section 51(1) of the Act because of the Landlord Use Notice to End the Tenancy dated April 13, 2016. The landlords are entitled to recover the \$ 100.00.00 filing fee for this application for a total claim of \$ 17,100.00.

Conclusion:

I have dismissed the tenants' claim to cancel the Notices to End the Tenancy. I granted the landlord an Order for Possession effective two days after service upon the tenants. The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, the landlords may register the Order with the Supreme Court of British Columbia for enforcement. I order that the landlords retain the security deposit and interest of \$ 7.54 for a total of \$ 1,007.54. I also grant the landlords recovery of the filing fee of \$ 100.00. I grant the landlord an order under section 67 for the balance due of \$ 16,092.46 but only against the tenant DD. This order may be filed in the Small Claims Court and enforced as an order of that Court. This Decision and all Orders must be served on the tenants as soon as possible. I have dismissed with leave all monetary claims against the tenant AD.

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: July 19, 2016

Residential Tenancy Branch