



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: CNR
Landlord's application: OPR, MNR, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The landlord called in at the appointed time. The tenant did not attend and the hearing proceeded in her absence. The tenant called into the hearing approximately 10 minutes after the hearing commenced. She disconnected from the hearing soon after but called back into the hearing and said that she was disconnected because of a battery problem with her phone. I will refer to the tenant's evidence in the reasons that follow:

Issue(s) to be Decided

Should the 10 day Notice to End Tenancy dated August 5, 2015 be cancelled?
Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The rental unit is a strata title apartment in Vancouver. The landlord testified that there is a written tenancy agreement but neither party submitted a copy as evidence. The tenancy began in September, 2015 for a one year term and thereafter on a month to month basis. The monthly rent is \$1,900.00 per month, payable on the first of each month. The tenant paid a security deposit of \$950.00 at the start of the tenancy.

The landlord testified that for the first few months of the tenancy the tenant paid her rent on time, but later she commenced to pay only part of the rent at a time by instalments. The landlord referred to them as "broken rent payments".

The landlord testified that the tenant failed to pay rent for August and on August 5, 2016 the landlord personally served the tenant with a 10 day Notice to End Tenancy for unpaid rent. The Notice stated that the tenant failed to pay rent in the amount of \$1,900.00 that was due on August 1, 2016. The notice required the tenant to move out of the rental unit by August 15, 2016. The tenant applied to dispute the Notice to End Tenancy on August 8, 2016. The landlord testified that the tenant has not paid rent for August or for September.

The landlord testified that the tenant is still occupying the rental unit, but in the last few days she has been observed to be moving her belongings from the rental unit.

The tenant called into the hearing late. The tenant testified that she has paid August rent; she said it was paid on August 1st. Later she corrected herself and said it was paid on August 5th. The tenant was asked if she received the 10 day Notice to End Tenancy dated August 5, 2016. The tenant denied that she was personally served with the Notice to End Tenancy on August 5th. She testified that it was placed in an envelope and thrown at her by a member of the landlord's family on August 15, 2016.

The tenant said at the hearing that she has moved out of the rental unit. She said that she intended to cancel her application because she has moved out. The tenant accused the landlord of harassing her and said she has made a police report. She said that she is confused about dates because the landlord and her family has been harassing her. The tenant testified that she was unaware of the landlord's application and has not received any documents from the landlord.

Analysis

The tenant said she was not served with the landlord's application for dispute resolution. The landlord provided proof that the application and Notice of Hearing was sent to the tenant by registered mail on September 8, 2016. Canada Post records show that delivery of the registered mail was attempted on September 12, 2016 and a Notice card was left indicating where the registered mail could be picked up. A second delivery attempt was made on September 12th and a second notice card was left for the tenant. On September 19, 2016 a final notice was delivered to the tenant's address.

Sections 89(1) & (2) of the Act provide that one of the ways in which an application for Dispute Resolution or an application for an order of possession may be served on a tenant is by registered mail to the address at which the person resides. Section 90 of

the Act provides that a document served by mail in accordance with section 89 is deemed to be received on the 5th day after it is mailed.

On the basis of the foregoing I do not accept the tenant's claim that she was not served with the application and notice of hearing. The evidence shows that the landlord served the documents to the tenant by registered mail to her current address, but the tenant failed to pick up the registered item from the post office. The failure to pick up registered mail does not defeat the deemed service provisions of the *Residential Tenancy Act*. I accept the landlord's testimony that the tenant is in the process of moving out of the rental unit, but as of the date of the hearing she continues to occupy the unit and has not returned possession to the landlord. The landlord has not received the keys from the tenant.

The tenant said that she paid rent on August 1st. Later she said that she paid it on the 5th. The tenant did not submit any documentary evidence in support of her testimony. The tenant's evidence was contradictory in other respects; she claimed that she was not served with the 10 day Notice to End Tenancy until it was thrown at her on August 15th, yet she filed her application to dispute the 10 day Notice on August 8, 2016.

I accept and prefer the landlord's testimony that rent for August and September is unpaid. The tenant said in her application that she was paying rent every two weeks, but she said she paid the August rent in full before the landlord serve her with a 10 day Notice to End Tenancy for unpaid rent. The tenant did not specify when or how the rent was paid and in the absence of any documentary evidence from her, I accept and prefer the landlord's testimony that rent for August and September has not been paid. I find that there is no basis for the tenant's application to cancel the Notice to End Tenancy and I dismiss the tenant's application without leave to reapply.

I allow the landlord's application for an order of possession pursuant to the Notice to End Tenancy and I grant the landlord an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court

I allow the landlord's claim for a monetary order for unpaid rent for August and September in the amount of \$3,800.00. The landlord is entitled to recover the \$100.00 filing fee for her application, for a total award of \$3,900.00. I order that the landlord retain the security deposit of \$950.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$2,950.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

The landlord has leave to reapply for a further claim after she has recovered possession of the rental unit and ascertained whether there is a basis for a claim for cleaning, repairs or loss of revenue.

Conclusion

The tenant's application has been dismissed without leave to reapply. The landlord's claim has been allowed and the landlord has been granted an order of possession and a monetary order.

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 28, 2016

Residential Tenancy Branch