



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNR, MNDC, O, MNSD

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

This hearing was scheduled to begin at 10:30 am on this date. The landlord and his counsel (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlord stated that he was not served with the tenants' notice of hearing package and was not aware of the application for dispute filed by the tenant. After waiting 10 minutes past the start of the scheduled hearing time to allow both parties to attend and present evidence and make submissions, the tenant's application was dismissed with leave to reapply as the landlord has disputed that no service was provided for the tenants' application. The landlord stated that the tenants were served with the landlord's notice of hearing package and the submitted documentary evidence by posting it to the rental unit door on January 10, 2017 with a witness. The landlord

provided undisputed affirmed testimony that the notice of hearing package and the submitted documentary evidence were posted to the rental unit door. I accept the undisputed affirmed evidence of the landlord and find pursuant to section 89 (2) of the Act that the tenants were properly served and are deemed sufficiently served as such, 3 days later on January 13, 2017.

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 parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy agreement began on November 15, 2009 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$800.00 payable on the 1st day of each month. The monthly rent is \$800.00 payable on the 1st day of each month. A security deposit of \$400.00 was paid.

The landlord provided undisputed direct testimony that the tenants were served with the 10 Day Notice dated December 19, 2016 by posting it to the rental unit door on November 19, 2016. The 10 Day Notice sets out that the tenants failed to pay rent of \$2,400.00 that was due on December 19, 2016 and the effective end of tenancy date is listed as December 29, 2016. The landlord stated the tenant failed to pay rent for October 2016 (\$800.00), November 2016 (\$800.00) and December 2016 (\$800.00). The landlord provided undisputed affirmed testimony that since the 10 Day Notice was served that no rent has been paid as of the date of this hearing.

In support of this application the landlord provided:

- Copy of 10 Day Notice dated December 19, 2016
- Copy of Completed Proof of Service document dated January 9, 2017
- Copy of signed tenancy agreement dated November 14, 2009
- Copy of two typed letters from Property Management
- Copy of handwritten note re: RCMP File
- Copy of two photographs
- Copy of 3 pages of email exchanges between strata and landlord
- Copy of handwritten notice to vacate by tenants dated December 22, 2016

Copy of handwritten notice confirming vacating the rental unit
Copy of typed letter re:10 Day Notice

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.

I accept the undisputed affirmed evidence of the landlord that the tenants' were served with the 10 Day Notice dated December 19, 2016. This is also evidence due to the tenants' application for dispute which was not served upon the landlord.

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 the effective date of the notice. In this case, this required the tenants to vacate the premises by December 29, 2016. As that has not occurred, I find that the landlords are entitled to a two-day order of possession.

Conclusion

The tenant's application is dismissed.
The landlord's is granted an order of possession.

The tenants must be served with the order of possession. If the tenants do not vacate the rental unit within the two days required, the landlords may enforce this order in the Supreme Court of British Columbia.

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: January 25, 2017

Residential Tenancy Branch

