



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Boundary Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNR, MNSD, OPR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, to retain the security deposit, an order of possession based on unpaid rent and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on July 31, 2017 copies of the Application for Dispute Resolution and Notice of Hearing were personally given to the male tenant. Service occurred at the landlords' office in the mid-afternoon. The landlord could not be sure the male tenant gave the female tenant a copy of the hearing documents that were provided to him.

Therefore, I find these documents were served to the male tenant effective July 31, 2017 in accordance with section 89 and 90 and 90 of the *Act*.

As there was no evidence the female tenant received the hearing documents I find that service is unproven.

The hearing proceeded based on service to the male tenant only.

The tenant did not appear at the hearing.

Preliminary Matters

The landlord said the tenants are currently up to date with rent payments.

An 18 page evidence package was personally served to the male tenant on August 3, 2017.

At the start of the hearing it was determined that an administrative error had occurred. The conference call had to be switched to another hearing conference call passcode. The landlord exited the hearing and dialed in again using new pass codes that were provided to the landlord. There was no evidence provided to me as to whether the tenant attempted to enter the conference call that continued on the hearing that proceeded with the original pass code issued to the parties.

Issue(s) to be Decided

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

Background and Evidence

The tenancy commenced on December 1, 2016. Rent is \$1,300.00, due on or before the first day of each month. A copy of the signed tenancy agreement was supplied as evidence.

The landlord stated that on July 6, 2017 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of July 15, 2017 was served by posting to the tenant's door. Service occurred in the early afternoon. A copy of the Notice was supplied as evidence.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$3,100.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The landlord submitted a record of payments made in July 2017. On July 4 the tenants paid \$800.00; on the 5th they paid \$500.00 and on the 24th they paid \$2,600.00. This left the tenants with a credit in the sum of \$650.00.

The landlord said the tenants are currently up to date with rent payments. Each rent payment has resulted in a receipt issued for use and occupancy only.

The landlord wishes to obtain an order of possession based on the July 5, 2017 Notice to end tenancy as the tenants failed to pay the rent owed within five days of receipt of the Notice.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. Therefore, I find that the tenants received the Notice to end tenancy on July 9, 2017.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenants are deemed to

have received this Notice on July 9, 2017, I find that the earliest effective date of the Notice is July 19, 2016.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was July 19, 2017.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on July 19, 2017, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenants exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended on the effective date of the Notice.

The landlord has been granted an Order of possession that is effective two days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary order in the sum of \$100.00. In the event that the tenant does not comply with this order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord does not wish to deduct the filing fee from the deposit.

Conclusion

The landlord is entitled to an Order of possession

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the

Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy*

Dated: October 25, 2017

Residential Tenancy Branch