



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL OPRM-DR

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Although the landlord applied for a monetary Order of \$1,200.00 in their initial claim, since they applied another \$2,400.00 in rent has become owing that was not included in their application. I have accepted the landlord's request to amend their original application from \$1,200.00 to \$3,600.00 to reflect this additional unpaid rent that became owing by the time this hearing was convened.

Preliminary Issue - Service of the Landlord's Application for Dispute Resolution

The landlord testified that the tenants were served by way of Registered Mail with the landlord's application for dispute resolution hearing package on February 6, 2018. The landlord provided a tracking number for the package. The tenants dispute having received the landlord's application as the tenants testified that they have not received any mail. The tenants testified that they had been living at a motel since January 6, 2018, while their possessions were still at the rental address.

Special rules for certain documents

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

(2) An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;*
- (b) by sending a copy by registered mail to the address at which the tenant resides;*
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;*
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

In this case the landlord served the tenants by way of registered mail. The tenants testified in the hearing that they have not received the package due to too much snow obstruction of the driveway, which the landlord disputed. The tenants also testified in the hearing that they were now occupying two residences, a motel and the rental home.

Although the tenant disputes having received the application, I find that the landlord served the tenants at the address at which they reside by way of registered mail, in accordance with section 89 (2)(b) of the *Act*. On this basis, I find the tenants deemed served with the application on February 11, 2018, five days after registered mailing.

Preliminary Issue - Service of the 10 Day Notice

The landlord testified that the tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 21, 2018 ("10 Day Notice") on by way of posting the notice on the tenants' door on January 21, 2018. The tenants disputed having received the 10 Day Notice, and testified that they were also residing at a motel since January 6, 2018.

Section 88 of the *Act* establishes the requirements for service of documents.

How to give or serve documents generally

88 *All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;*
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;*

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];

(j) by any other means of service prescribed in the regulations.

In this case the landlord served the tenants by attaching a copy of the 10 Day Notice to the tenants' door. On a balance of probabilities, I find that the tenants were served with the 10 Day Notice at the address at which they reside, in accordance by section 88 (g) of the Act. On this basis, I find the tenants deemed served with the application on January 24, 2018, three days after its posting on the door.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to recover their filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on July 1, 2017, with monthly rent in the amount of \$1,200.00 payable on the first day of each month. The tenants testified in the hearing that they are now residing at a motel, but have not removed their possessions from the residence.

The landlord issued the 10 Day Notice on January 21, 2018, indicating an effective move-out date of January 31, 2018. The landlord testified that the tenants owe \$3,600.00 in outstanding rent for the months of January 2018 through to March 2018. The tenants dispute this, stating that they had paid the January rent on January 3, 2018 in cash. The tenants do not dispute that they have not paid for February and March

2018. The tenants testified in the hearing that they did not receive a receipt for the January rent, although they did receive a receipt for the December 2017 rent payment.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the testimony of the landlord and the tenants, I find that the tenants were served with the Notice to End Tenancy, and I find that the 10 Day Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

The tenants failed to make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. Based on the testimony and evidence provided for this hearing I find that the tenants did not provide sufficient evidence to support their claim that January 2018 rent was paid on January 3, 2018. The tenants did not provide receipts or proof of payment although normally the landlord issued receipts for rent payments, nor was there any witness testimony. On this basis, I find that the tenants did not pay rent, nor did they have the grounds to withhold, deduct, or reduce the rent payable for the months of January 2018 through to March 2018. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on January 24, 2018, the corrected effective date on the 10 Day Notice.

In this case, this required the tenants and anyone on the premises to vacate the premises by January 24, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*.

I am allowing the landlord a Monetary Order to recover unpaid rent in the amount of \$3,600.00 for the months of January 2018 through to March 2018. As the landlord was successful in his application, I am allowing the landlord to recover the \$100.00 filing fee from the tenants.

Conclusion

The landlord's application is allowed. I find that the landlord's 10 day Notice is valid and effective as of January 24, 2018.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. 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.

I issue a \$3,700.00 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent, and also allows the landlord to recover the filing fee for this application. . The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 14, 2018

Residential Tenancy Branch