Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPR MNRL MNDCL FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution ("application") under the *Residential Tenancy Act ("Act")* to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and to recover the cost of the filing fee.

An agent for the landlord ("agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing") and application was considered. The agent testified that the tenant was served with Notice of Hearing by serving an adult "Natasha" who resided at the rental home address and who indicated that they would serve the tenant on August 2, 2018. The agent testified that the tenant continues to occupy the rental unit and has not paid rent for the last four months including June, July, August and September 2018.

Preliminary and Procedural Matters

Section 89(1) of the *Act* imposes specific requirements for where and how the applicant must serve a respondent with a Notice of Hearing. Section 89(1) does not permit an applicant who is seeking a monetary order to serve the respondent by serving an adult who resides with the tenant. Therefore, I find the landlord has not served the tenant in

accordance with the *Act* for the purposes of a monetary order and, as a result, **I dismiss** the landlord's monetary claim **with leave to reapply.**

Section 89(2) of the *Act* does permit applications under section 55 for an order of possession to be served to an adult who apparently resides with the respondent. As a result, I find that the respondent was sufficiently served in accordance with the *Act* for the purposes of the landlord's application seeking an order of possession. As a result, this hearing proceeded with consideration of the landlord's request for an order of possession for unpaid rent or utilities under the *Act.*

In addition to the above, as an email address was provided for both parties, the decision will be emailed to both parties.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act?*

Background and Evidence

The agent affirmed that the tenant became the sole tenant as of February 1, 2018 and that monthly rent of $500.00 was due on the first day of each month. The agent testified that a written tenancy agreement did not exist and that the tenancy was based on a verbal agreement between the parties.

The agent provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 20, 2018 ("10 Day Notice"). The agent stated that he served the tenant personally with the 10 Day Notice on July 20, 2018 and that the 10 Day Notice indicates that $1,000.00 was owing as of July 1, 2018 and that the tenant did not pay any amount since May 2018 and did not dispute the 10 Day Notice. The effective vacancy date listed on the 10 Day Notice was July 30, 2018 which has passed.

The landlord is seeking an order of possession of the rental unit as the tenant continues to occupy the rental unit.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession – I accept the tenant's undisputed testimony that the tenant was served with the 10 Day Notice on July 20, 2018 and has not paid any rent for the months of June, July, August and September 2018 and continues to occupy the rental unit. I also accept that the tenant did not dispute the 10 Day Notice.

Pursuant to section 46 of the *Act,* I find the tenant is conclusively presumed to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which in the matter before me was July 30, 2018. Section 55 of the *Act* applies and states:

> **Order of possession for the landlord**
>
> **55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**
>
>> (a) **the landlord's notice to end tenancy complies with section 52** *[form and content of notice to end tenancy]***, and**
>>
>> (b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**
>
> [My emphasis added]

Based on the above and taking into account that the tenant continues to occupy the rental unit and that I find the 10 Day Notice complies with section 52 of the Act, I grant the landlord an order of possession **effective two (2) days after service on the tenant.**

I find the tenancy ended on July 30, 2018 which was the effective date listed on the 10 Day Notice before me.

As the landlord's application was not properly served in terms of the monetary claim, I do not grant the recovery of the cost of the filing fee.

Conclusion

The landlord's application was partially successful.

The tenancy ended on July 30, 2018.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord's monetary claim is dismissed with leave to reapply due to a service issue. I do not grant the filing fee.

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 Act*.

Dated: September 7, 2018

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Residential Tenancy Branch