



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 dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to sections; and 67
- an Order of for the landlord's filing fees, pursuant to section 72.

This hearing was adjourned from a direct request on October 29, 2018. The landlords confirmed they received a copy of the direct request interim decision and Notice of Dispute Resolution by email on November 1, 2018.

This matter was referred to a hearing to determine if:

- a) the Residential Tenancy Branch has jurisdiction to hear this matter; and
- b) the 10 Day Notice to End Tenancy for Unpaid Rent was properly served on the tenant.

Although I left the teleconference hearing connection open until 11:10 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am, the tenant did not attend this hearing. The landlords' two agents attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

Issues to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
- Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?
- Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlords testified their application is related to a garage at 9200 Windsor Street and not the garage of 9206 Windsor Street.

The landlords testified they served the dispute resolution package to the tenant by registered mail on November 4, 2018. They provided a Canada Post tracking number.

The landlords testified the address they used for service of documents to the tenant is the only residential address they have for the tenant, namely 9206 Windsor Street. They testified that they are also the landlords for 9206 Windsor Street. In October 2018 they discovered the tenant had moved out of 9206 Windsor and sublet it to someone else. They do not know the tenants' whereabouts and do not have a forwarding address for the tenant. The registered mailings to the tenant were all unclaimed.

The landlords entered the following documents into evidence:

- a tenancy agreement for "9200 Windsor Chilliwack B.C. GARAGE" indicating a monthly rent of \$250.00, due on the first day of each month commencing on November 30, 2015. Under the section "Use and Occupancy" it is noted "The Tenant agrees to use the premises only as A WORKSHOP or GARAGE."
- a 10 Day Notice dated October 5, 2018 for \$250.00 in unpaid rent served to the tenant's address of "Garage, 9206 Windsor Street..." The rental unit to which the notices pertains is listed as "Garage, 9206 Windsor Street..."
- a copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail on October 5, 2018 to "Garage, 9206 Windsor Street..." concerning a rental unit at the same address.

Analysis

The *Act* establishes the ways in which documents are required or permitted to be served on a party to dispute resolution. The purpose of serving documents is to notify the parties being served of matters relating to the *Act* and regulations, the tenancy agreement, or a dispute resolution proceeding. Another purpose of serving the documents is to allow the other party to prepare for the hearing and gather information they may need to serve and submit as evidence in support of their position.

The landlords used registered mail to serve the dispute resolution package; section 89(2) of the *Act* states (emphasis added):

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].

The Residential Tenancy Branch Rules of Procedure 3.5 states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the hearing package and all evidence as required by the *Act* and these Rules of Procedure.

The landlords presented affirmed testimony that 9206 Windsor was the tenant's residential address. The landlords have consistently used the destination of the *garage* at 9206 Windsor to serve documents at the tenant's residential address. The tenant was not residing in the garage at 9206 Windsor Street. The garage involved in this dispute is 9200 Windsor Street, thus the landlords have also not served the tenant at the address of the unit under dispute.

I am not satisfied the landlords have served the dispute resolution package according to the requirements of Section 89(2).

Conclusion

I dismiss the landlords' application with leave to reapply.

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: December 14, 2018

Residential Tenancy Branch