Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Preliminary Matter

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that each tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act).*

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

(a) by leaving a copy with the person;

(c) by sending a copy by registered mail to the address at which the person resides;

(d) by sending a copy by registered mail to a forwarding address provided by the tenant; or

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

The Landlord submitted no evidence to show that either Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that they were not served in accordance with section 89(1)(a) of the *Act*.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to both Tenants in the same package, via courier, on June 23, 2011. The Landlord cited a tracking number that corroborates this statement. He stated that he has checked the on-line delivery records for the courier service, which indicate that this package was delivered to the rental unit on June 24, 2011. As there was a postal disruption on June 23, 2011, I find that using a courier service was an appropriate substitute for serving documents via Canada Post, pursuant to section 71(2)(c) of the *Residential Tenancy Act (Act)*.

From the information provided, I am unable to determine which of the two Tenants received the package that was couriered to the rental unit. As I am unable to determine which of the two Tenants has been served copies of the Application for Dispute Resolution and Notice of Hearing by courier, I am unable to conclude that either party has been served these parties by courier service/mail, pursuant to section 71(2)(c) of the *Act)*.

The Landlord submitted no evidence that the Application for Dispute Resolution was mailed to the female Tenant and I cannot, therefore, conclude that they were served in accordance with section 89(1)(c) or 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the female Tenant in an alternate manner, therefore I find that they were not served in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that both Tenants received the Application for Dispute Resolution, therefore I cannot conclude that either Tenant has been sufficiently served pursuant to sections 71(2)(b) of the *Act*.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(2) of the *Act.*

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution 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; or

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

Based on the testimony of the Landlord and in the absence of evidence to the contrary, I find that one of Tenants was served with the Application for Dispute Resolution and the Notice of Hearing by courier, pursuant to section 71(2)(c) of the *Act* and that the other Tenant was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(c) of the *Act.*

As both Tenants have been properly served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2) of the *Act,* I find it is appropriate to consider the Landlord's application for an Order of Possession.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The Landlord stated that this tenancy began prior to the Landlord purchasing the property; that the Tenant was required to pay monthly rent of $1,300.00 on the first day of each month; and that the Tenant did not pay rent for June or July of 2011.

The Landlord stated that he personally served a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of June 24, 2011, to the male Tenant on June 14, 2011.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of $1,300.00 on the first day of each month and that the Tenant has not paid rent for June of 2011.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act* . Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the male Tenant was personally served with a Notice to End Tenancy that directed the Tenant to vacate the rental unit by June 24, 2011, pursuant to section 46 of the *Act.*

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End 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 Tenant exercised either of these rights and, pursuant to section 46(5)

of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon 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.

Pursuant to section 72(2) of the Act, I authorize the landlord to retain $50.00 from the Tenant's security deposit, in compensation for the filing fee paid for this Application for Dispute Resolution.

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: July 18, 2011.

Residential Tenancy Branch