



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR OPR OPC MNR MNSD MNDC FF

Introduction

This hearing dealt with applications by the tenants and the landlord. The tenants applied to cancel a notice to end tenancy for cause and a notice to end tenancy for unpaid rent. The landlord applied for an order of possession, a monetary order and an order to retain the security deposit in partial compensation of the monetary order. One tenant, the landlord and an agent for the landlord participated in the teleconference hearing.

Service of the Applications

The landlord confirmed that they had received the tenants' application.

The tenants stated that they had not received the landlord's application. The landlord submitted two registered mail receipts showing each tenant's name and the address of the rental unit. The Canada Post website showed that on November 23, 2012 the landlord's packages were mailed; on November 26, 2012 Canada Post attempted delivery and left a notice card indicating where the items could be picked up; and on December 2, 2012 Canada Post left final notices for pick up. The tenant stated that they did not receive any notices and that their mail often does not get to them. The tenant did not provide any further evidence to support his claim that they have problems receiving their mail.

Deemed service means that the document is presumed to have been served unless there is clear evidence to the contrary. Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail does not override the deemed service provision.

I found that the landlord had served their applications to the tenants in accordance with section 89 of the Act. The tenants did not provide clear evidence to the contrary and they were therefore deemed served with the landlord's application on November 28, 2012, as per section 90 of the Act. Section 5 of the Act states that the Act cannot be

avoided. I proceeded to hear evidence from the tenant and the landlord on both applications.

Tenant's Conduct in the Hearing

The tenant continually interrupted during the hearing, despite repeated warnings. The tenant refused to answer questions or listen to my explanations, and he became increasingly loud and hostile. Near the end of the hearing the tenant requested an adjournment because they had not received the landlord's application. I denied the request, and attempted to explain to the tenant why I found that they were deemed served. The tenant would not listen, and began shouting. I had heard all necessary evidence from the landlord and tenant at that time, and I ended the teleconference hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy began on October 1, 2012. Rent in the amount of \$700 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$350.

Landlord's Evidence

The tenants failed to pay rent in the month of November 2012 and on November 2, 2012 the landlord personally served the tenants with a notice to end tenancy for non-payment of rent. The tenants further failed to pay rent in the month of December 2012. The landlord requested an order of possession and a monetary order for the unpaid rent and lost revenue.

Tenants' Response

On October 31, 2012, the tenants paid the landlord \$700 in cash for November 2012 rent but the landlord did not provide a receipt. The tenants did not provide any bank statements or other evidence to support their claim that they paid the rent. The tenant refused to answer whether they had paid any rent for December 2012.

Analysis

The tenants were served with a notice to end tenancy for non-payment of rent. I find that the tenants did not provide sufficient evidence to support their claim that they paid the landlord November's rent. The landlord cannot provide evidence of non-payment. The tenants refused to say whether they had paid December 2012 rent. I find that the tenants did not pay the rent for November 2012 or December 2012. Based on the above facts I find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim for \$1400 in unpaid rent and lost revenue. The landlord is also entitled to recovery of the \$50 filing fee.

As the tenancy has ended pursuant to the notice to end tenancy for unpaid rent, it was not necessary for me to consider the notice to end tenancy for cause.

Conclusion

The tenants' application is dismissed.

I grant the landlord an order of possession effective two days from service. The tenants must be served with the order of possession. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord is entitled to \$1450. I order that the landlord retain the security deposit of \$350 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1100. This order may be filed in the Small Claims 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: December 10, 2012.

Residential Tenancy Branch