



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0878410 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and to recover the RTB filing fee.

Both the landlord and one of the tenants attended the teleconference hearing and gave affirmed evidence.

The tenant who attended the hearing said the other tenant was not served properly with the Notice of a Dispute Resolution Hearing and Landlord's Application for Dispute Resolution and has therefore chosen to not participate in the hearing.

Issue(s) to be Decided

Was there a procedural error in service, and if so what is the impact on the landlord's application?

If the landlord's application may proceed, is the landlord entitled to an order of possession?

Background and Evidence

The written tenancy agreement signed by the parties on March 29, 2013 indicates the tenancy started on May 1, 2013 and the tenants are obligated to pay \$1,195.00 rent monthly in advance on the first day of the month. The tenants also paid a security deposit of \$595.00.

The landlord gave evidence that he served the tenants with a notice to end tenancy for unpaid rent (the "June Notice") on June 6, 2014 by personal service. The June Notice specifies a move-out date, or effective date, of June 16, 2014. The June Notice says the tenants failed to pay rent of \$1,195.00 that was due June 1, 2014.

Service

The landlord notes that he named both tenants (MM and JC) on the Landlord's Application for Dispute Resolution which was filed with the RTB on June 13, 2014. He says the RTB only issued him one Notice of a Dispute Resolution Hearing, naming MM as the respondent. The landlord's evidence is that he personally served the tenants by handing the Notice of a Dispute Resolution and Landlord's Application for Dispute Resolution to JC.

The tenant who attended the hearing (JC) agrees that the landlord gave him one Notice of a Dispute Resolution Hearing naming MM as the respondent and the Landlord's Application for Dispute Resolution on June 13, 2014.

Unpaid Rent

The tenant gave evidence that they made a partial payment of \$850.00 for June 2014 rent on June 2, 2014. Subsequently, they were served with the June Notice on June 6, 2014 stating they failed to pay \$1,195.00 that was due June 1, 2014.

The tenant gave evidence that they were unable to pay the balance of June 2014 rent before June 13, 2014 and so they contacted the landlord by email to ask whether he would accept it on June 13, 2014. The tenant's email of June 9 reads:

"Hi [Landlord]. Just so I understand your position on this matter I am writing for some clarification. I get paid on June 13, 2014. Are you saying that you will not accept final rental payment after Wednesday June 11, 2014 or are you willing to accept final full payment of June's rent on Friday June 13, 2014."

The landlord's email response reads, in part:

"The "10 Day Notice to End Tenancy for Unpaid Rent" will remain in effect with the move out day being June 16th. However if you are able to pay the rent prior to June 16th send it to me and I will reconsider your occupancy at that time."

The tenant's evidence is that he understood the landlord to mean that if the landlord accepted the rent on June 13th, that would end the eviction notice. The tenants then paid the outstanding \$345.00 on June 13th.

The landlord's evidence is that he meant by his email that he would consider reinstating the tenancy if he received the outstanding rent before June 16th. The landlord gave evidence that he intended to think about reinstating the tenancy but when he received some emails from the tenants that he considered "snarky", he decided to not reinstate the tenancy. He accepted the outstanding \$345.00 rent on June 13th and wrote a note dated June 13, 2014 which reads:

"I [Landlord] did receive \$345 from [MM] by email, for "use and occupancy only".

The move out day still remains as June 16, 2014 as stated in the 10 day notice."

Analysis

I find the RTB erred in providing the landlord with only one Notice of a Dispute Resolution Hearing naming one of the tenants, rather than two Notices of a Dispute Resolution Hearing each naming one of the two tenants. As a result of the RTB error, the landlord could not serve each of the two tenants because the landlord had only one such notice to serve.

Section 59 of the Act provides that a person who makes an application for dispute resolution must give a copy of the application to the other party within three days of making it, or within a different period specified by the director. In addition, Rule 3.1 of the Residential Tenancy Rules of Procedure provides that the notice of a dispute resolution hearing must be served on the respondent together with the application for dispute resolution.

In this case, the landlord served only one of the two respondents. However, the Act does not specify any particular consequence or penalty for failing to serve such documents.

The Residential Tenancy Branch Rule of Procedure 3.3 states "If the respondent does not attend the dispute resolution proceeding, the applicant must prove to the arbitrator that each respondent was served as required under the Act". In this case, respondent JC attended the hearing and so the landlord is not required to prove that he was served. I accept the evidence of the landlord that he served MM by leaving the documents with an adult member of the household (JC), and I find that MM was properly served.

I find there is no breach of administrative fairness to the tenants if I consider the landlord's application, since both tenants were aware of the Landlord's Application for

Dispute Resolution and Notice of a Dispute Resolution Hearing and had an opportunity to attend the hearing. Accordingly, I have considered the landlord's application.

I find the tenants received the June Notice on June 6, 2014. I agree with the tenants that the landlord specified the wrong amount of unpaid rent on the June Notice, since at the date of the June Notice the tenants had already paid \$850.00 of the June 2014 rent and thus owed \$345.00. However, I find the tenants were aware of the correct amount of rent owing at the date of the June Notice and they therefore understood what amount they had to pay to cancel the June Notice. For that reason, I find it is appropriate to allow the landlord to amend the June Notice to specify the amount of \$345.00 owing at the date of the June Notice.

I accept the evidence of both parties that the tenants did not pay the remaining \$345.00 until June 13, 2014. The parties agree this is after the five days specified in Section 46(4). At issue is whether the landlord indicated that he would cancel the June Notice if the tenants paid by June 16, 2014.

I find that the landlord did not promise to reinstate the tenancy if the outstanding rent was paid by June 16, 2014. I accept the landlord's evidence that he meant precisely what he said in his email, that he would reconsider whether to end the tenancy. I accept the landlord's evidence that he decided not to reinstate the tenancy and did not do so.

According to Section 46(5), if a tenant does not pay the rent or make application for dispute resolution within five days of receiving the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. For these reasons, I find that the landlord is entitled to an order of possession. I grant the landlord an order of possession which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

The landlord is also entitled to recover his RTB filing fee of \$50.00. I authorize the landlord to deduct the amount of \$50.00 from the tenants' security deposit to recover the RTB filing fee.

Conclusion

I grant the landlord an order of possession.

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 03, 2014

Residential Tenancy Branch

