



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OP, MNR, FF

Introduction

This hearing was scheduled 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 and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The Agent for the landlord stated that on October 8, 2009 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenants via registered mail at the address noted on the Application. The landlord provided a copy of a Canada Post receipt and tracking number as evidence of service.

The landlord gave affirmed testimony that the tenants provided her with their address in Prince George as they have moved there to care for an ill family member. The landlord stated that the female tenant called her last night to say that neither she nor the male tenant would be attending this hearing today.

These documents are deemed to have been sufficiently served to each tenant in accordance with section 89 of the *Act*, however the tenants did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession as the result of unpaid pad rental?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy agreement requires the tenants to pay monthly pad rent of \$250.00 due on the first day of each month.

The landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of September 27, 2009 was served to the tenants at their Prince George address by regular mail sent on September 11, 2009. The landlord stated that the effective date of the Notice; September 27, 2009, took into account the days required for service of this document. The landlord testified that the tenants did call her to discuss the Notice and that the tenants have made continual promises to pay their outstanding pad rental.

The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the landlord received \$2,500.00 within five days of service. The Notice also indicated that the tenants are presumed to have accepted that the tenancy is ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The landlord testified that the last month the tenants paid the pad rental was November 2008 and that they currently owe \$3,000.00 to November 2009 inclusive.

Analysis

Section 81 of the Act stipulates that a document that sent by mail is deemed to be received on the fifth day after mailing. I therefore find that the tenants received the Notice to End Tenancy on September 16, 2009.

Section 39(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the Tenant receives the Notice. As the tenant is deemed to have received this Notice on September 16, 2009 I find that the earliest effective date of the Notice is September 27, 2009 the effective date on the Notice..

In the absence of evidence to the contrary, I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on September 27, 2009, pursuant to section 39 of the Act.

Section 39(4) 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 tenants exercised either of these rights and pursuant to section 39(5) of the Act, I find that the tenants accepted that the tenancy has ended. On this basis I will grant the Landlord an Order of Possession that is effective within two days of service.

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

Conclusion

The landlord has been granted an Order of possession that is effective two days after service to the tenants. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$3,050.00 in compensation for unpaid pad rental and the filing fee costs of \$50.00 paid by the landlord 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: November 18, 2009.

Dispute Resolution Officer