



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, 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 landlord provided affirmed testimony that January 11, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service to the rental unit address. The landlord testified that the mail was returned as refused. On January 12, 2010, the landlord was at the house to complete an inspection and gave a copy of the Notice and documents to the tenant's friend. Subsequently the landlord did talk with the tenant about the hearing.

These documents are deemed to have been served by registered mail, in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

Is the landlord entitled to filing fee costs?

Preliminary Matter(s)

At the start of the hearing the Application was amended to correct the spelling of the landlord's name. The Application was also amended to include a claim for unpaid February rent owed.

Background and Evidence

The tenancy agreement requires the tenant to pay monthly rent of \$400.00 due on the first day of the month. The tenancy commenced on June 1, 2009. The tenant has not paid rent for December 2009, January and February 2010, in the sum of \$1,200.00.

The landlord stated that on December 8, 2009, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 17, 2009, was personally served to the tenant, in the evening, by the landlord with a witness present. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$400.00 within five days after the tenant is assumed to have received the Notice. The Notice also indicated that the tenant is presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

Analysis

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was December 18, 2009.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on December 18, 2009, 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 will grant the landlord an Order of Possession that is effective two days after service to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,200.00 for December 2009, January and February 2010, and that the landlord is entitled to compensation in that amount.

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

The landlord has been granted an Order of Possession that is effective two days after the notice has been served. 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 \$1,250.00, which is comprised of \$1,200.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution and I grant the landlord a monetary Order in that amount. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia 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: February 15, 2010.

Dispute Resolution Officer