

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 Agent for the landlord provided affirmed testimony that on March 26, 2010, copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to each tenant via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service for each tenant was submitted as evidence.

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

Preliminary Matter

At the start of the hearing the landlord provided affirmed testimony that 32 pages of evidence had been mailed to the Residential Tenancy Branch on either March 25 or 26, 2010. This evidence was not before me. As I found that the tenants had been served with the evidence via registered mail I requested that the landlord fax a copy of the evidence package to me and this evidence was then referenced during the hearing.

The landlord's Application was amended to correct the spelling of the landlord's name and to increase the monetary claim taking into account unpaid rent to date.

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?

Background and Evidence

The tenancy commenced on June 23, 2009. Rent is \$1,300.00 per month, due on the first day of the month.

The landlord stated that on March 9, 2010 a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of March 19, 2010, was served by posting to the tenant's door at 5 p.m., with a witness present. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,300.00 within five days after the tenants were assumed to have received the Notice. 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 tenant filed an Application for Dispute Resolution within five days.

The landlord testified that he signed the Notice at his desk and made an error in the issue date, entering March 25, rather than March 9, 2010; the date the Notice was posted to the door.

The tenants paid \$500.00 rent in March and have not paid April or May, 2010 rent owed totalling \$3,400.00 in unpaid rent.

The landlord confirmed receipt of a deposit paid but has not claimed against the deposit.

Analysis

In relation to the issue of the date of the Notice, I find that the Notice contained the information required by section 52 of the Act; which requires a Notice to include an issue date. I find that a reasonable person would recognize that the issue date was not a date that fell beyond the date the Notice was posted to the door of the rental unit; March 9, 2010. I find that the landlord made a clerical error and that the Notice was issued on the date the Notice was posted to the door of the rental unit, March 9, 2010. I have based this decision on the affirmed testimony of the landlord's agent who confirmed that he signed the Notice on the date it was posted and the agent's testimony that she posted the Notice to the door on March 9, 2010. Therefore, I find that the Notice is valid.

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenants received the Notice to End Tenancy on March 12, 2010.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenants received the Notice. As the tenants are deemed to

have received this Notice on March 12, 2010, I find that the earliest effective date of the Notice is March 22, 2010.

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 March 22, 2010.

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 March 22, 2010, 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 tenants exercised either of these rights and, pursuant to section 46(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 2 days after it is served to the tenants.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$3,400.00 for March, April and May 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 tenants for the cost of this Application for Dispute Resolution.

The deposit must be disbursed as required by the Act.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service of the Notice to the tenants. This Order may be served on the tenants, 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 \$3,450.00, which is comprised of \$3,400 in unpaid March, April and May, 2010, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$3,450.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, 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: May 10, 2010.

Dispute Resolution Officer