

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, 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 copies of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant via registered mail at the address noted on the Application, on May 20, 2010. A copy of a Canada Post receipt and tracking number was provided as evidence of service.

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

Preliminary Matter

The Application was amended to include a claim for unpaid rent to July 2010, inclusive.

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 for unpaid rent?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on February 1, 2010. Rent was \$875.00 per month, due on the first day of the month.

On March 30, 2010, the tenant paid \$600.00 and has not made any further rent payments. The landlord is claiming compensation for unpaid rent in the sum of \$4,650.00, from February to July, 2010, inclusive.

The landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of May 13, 2010, was served on May 2, 2010 via posting to the front door of the rental unit at approximately 3 p.m. with a witness present.

The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the landlord received \$2,900.00 within five days of service. 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 file an Application for Dispute Resolution within five days.

The Landlord stated that the tenant has not made any rent payment since the \$600.00 paid on March 30, 2010. The landlord believes the tenant may have moved out this past weekend; July 3 – 4, 2010. The landlord requested an Order of possession and indicated he requires time to clean the rental unit for new tenants.

Analysis

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 tenant received the Notice to End Tenancy on May 5, 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 Tenant receives the Notice. As the tenant is deemed to have received this Notice on May 5, 2010, I find that the earliest effective date of the Notice is May 15, 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 May 15, 2010.

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 May 15, 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 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 it is served upon the tenant.**

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$4,650.00 for February to July 2010, inclusive, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit, and I find 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 it is served upon the tenant**. 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 \$4,700.00, which is comprised of \$4,650.00 in unpaid 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 \$4,700.00. 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: July 06, 2010.

Dispute Resolution Officer