

DECISION

Dispute Codes:

OPR, 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 and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on June 4, 2010, in the afternoon he served each tenant copies of the Application for Dispute Resolution and Notice of Hearing at the rental unit, with a witness present.

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.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on October 10, 2008, rent was \$1,000.00 per month, due on the first day of the month.

The landlord stated that on May 21, 2010 a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of June 3, 2010, was served by posting to the door of the rental unit, in the morning, with the landlord's father present as a witness.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$3,500.00 within five days after the tenants are 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 tenants filed an Application for Dispute Resolution within five days.

The landlord has received some rent payments made after the effective date of the Notice, but has not received all of the rent due and currently is owed \$2,500.00 in rent arrears.

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 24, 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 24, 2010, I find that the earliest effective date of the Notice is June 3, 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 June 3, 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 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 service to the tenants.

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.

The landlord is at liberty to submit an Application claiming compensation for unpaid rent.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service 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 \$50.00, which is comprised of the filing fee 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: July 20, 2010.

Dispute Resolution Officer