



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 Agent for the landlord provided affirmed testimony that on August 5, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant and individually to the tenant's estate, via registered mail at the address noted on the Application. A Canada Post tracking number and receipts were provided as evidence of service.

The landlord made a number of attempts to reach an agent for the tenant, who passed away on April 26, 2010. The individuals named as executor of the will were served with Notice of this hearing via regular mail. The landlord spoke with these individuals, who declined to participate in the hearing.

The landlord also sent a copy of the Notice of hearing to the only known family member, whose name appeared on the originals Application to rent. This individual did not respond and it is not know if he continues to reside at the address provided by the tenant at the start of the tenancy.

I find that the tenant's estate has been sufficiently served, pursuant to section 71(2)(b) of the Act; however an agent for the tenant's estate 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?

Background and Evidence

The tenancy commenced on May 1, 2005, the subsidized rent is \$414.00 per month, due on the first day of the month. A copy of the tenancy agreement signed by the parties on April 27, 2005, was submitted as evidence.

The landlord stated that on April 9, 2010, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of April 22, 2010, was served by regular mail to the tenant's address.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$414.00 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.

The landlord later discovered that the tenant passed away on April 26, 2010.

The landlord wishes to have legal possession of the rental unit. The tenant's belongings remain in the unit. The landlord is claiming unpaid rent for April and May, 2010, in the sum of \$414.00 each month.

Analysis

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 April 14, 2010, I find that the earliest effective date of the Notice is April 24, 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 April 24, 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 April 24, 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 had ended. On this basis I will

grant the landlord an Order of Possession that is effective 2 days after service to the tenant's estate at the rental unit address.

In the absence of evidence to the contrary, I find that the tenant and the tenant's estate have not paid rent in the amount of \$828.00 for 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 tenant for the cost of this Application for Dispute Resolution.

The landlord will follow the Residential Tenancy Regulation in relation to the tenant's belongings that may remain in the rental unit once possession is gained by the landlord.

Conclusion

The landlord has been granted an Order of possession that is effective 2 days after mailing. This Order may be served on the tenant's named in the Application, 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 \$878.00, which is comprised of \$828.00 in unpaid 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 \$878.00. 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.

Dated: August 31, 2010.

Dispute Resolution Officer