



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 stated that on January 16, 2011, at approximately 12:05 p.m. the tenant was personally served copies of the Application for Dispute Resolution and Notice of Hearing by an agent of the landlord, J.C.

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.

The tenant submitted an Application requesting cancellation of the 10 Day Notice received on December 30, 2010, more time to cancel the Notice and repair and emergency repair Orders.

The landlord was unaware of the tenant's cross-Application and the tenant failed to attend this hearing in support of his Application.

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 verbal tenancy agreement requires the tenant to pay monthly rent of \$935.00 on the first day of each month. The tenant has not paid rent in November and December, 2010, and January 2011, in the sum of \$2,805.00

The landlord stated that on December 30, 2010 a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of January 13, 2011, was served to the tenant. The individual who served the Notice was unavailable to testify and a statement was not supplied as evidence of service. A copy of the Notice ending tenancy was submitted as evidence.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,870.00 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 tenant's Application for dispute resolution indicated that the tenant was served with the 10 day Notice ending tenancy via registered mail and that he received the Notice on December 30, 2010. On January 13, 2011, the tenant submitted an Application requesting more time to apply to cancel the Notice and to cancel the Notice issued.

Analysis

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.

Based on the information contained in the tenant's Application, I find that on December 30, 2010, the tenant received the 10 day Notice ending tenancy that was issued on that date by the landlord. The tenant failed to attend his hearing in support of his Application.

I find that the tenant has accepted that his tenancy has ended, pursuant to section 46(5) of the Act. On that basis I will grant the landlord an Order of Possession that is effective two days after the order is served.

As the tenancy is ending, I dismiss the tenant's Application.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$2,805.00 for November and December, 2010; and January, 2011, 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 service to 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 \$2,855.00, which is comprised of \$2,805.00 in unpaid November, December, 2010; and January, 2011, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

I grant the landlord a monetary Order in the sum of **\$2,855.00**. 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.

The tenant's Application is dismissed.

Dated: January 27, 2011.

Residential Tenancy Branch