



Dispute Resolution Services

Page: 1

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.

Both parties were present at the hearing; the tenant entered the hearing 3 minutes late and was provided with an update on the process, application and service issues. The parties were each affirmed.

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 December 1, 2009, rent is currently \$2,085.00 per month due on the first day of the month. The tenant acknowledged that she owed the landlord rent arrears and recently paid \$2,900.00; the tenant agreed that the landlord had not reinstated the tenancy and that the tenant has agreed to pay the remaining arrears, late fees for January and February plus the filing fee costs by February 19, 2011.

The tenant acknowledged receipt of a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of January 15, 2011, that was served by posting to her door as declared by the landlord, on January 5, 2011.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,120.00 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.

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 January 8, 2011.

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 January 8, 2011, I find that the earliest effective date of the Notice is January 18, 2011.

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 January 18, 2011.

I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on January 18, 2011, 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. The tenant did not pay the rent in full nor did she did not dispute the Notice. The tenant acknowledged that her tenancy has not been reinstated.

I find that the tenant has not paid February, 2011, rent and late fee in the amount of \$1,330.00 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 2 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 \$1,380.00, which is comprised of \$1,330.00 in unpaid February, 2011, rent, late fee 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 \$1,380.00. 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: February 16, 2011.

Residential Tenancy Branch