



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, 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 damage or loss under the Act, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that February 4, 2011, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number and receipt 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.

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 and damage or loss under the Act?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The fixed-term tenancy commenced on October 1, 2010, rent was \$1,900, due on the first day of each month. A deposit in the sum of \$950.00 was paid at the start of the tenancy. A copy of the signed tenancy agreement was submitted as evidence.

The landlord stated that on January 18, 2011, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of February 1, 2011, was served by registered mail sent to the tenant's rental unit address.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,900.00 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 stated that he made a clerical error on the Notice, which indicated it had been issued on January 19, 2011; in fact the Notice was issued on January 18, 2011 and mailed to the tenant on the day of issue.

On January 22, 2011, the landlord received \$750.00 from the tenant, which he deposited. The tenant did not pay February rent owed.

The landlord believes that the tenant may have vacated the rental unit by February 5, 2011; but he was not confident that he has legal possession of the unit or if the tenant has retained possession.

Analysis

I find, pursuant to section 68(1), that the Notice ending tenancy issue date is amended to January 18, 2011. I have determined that the landlord did make a clerical error when the Notice was issued and that a reasonable person would accept that a Notice mailed on February 18, 2011, was not issued on February 19, 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 the fifth day after mailing, January 23, 2011, I find that the earliest effective date of the Notice is February 2, 2011.

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 February 2, 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. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, 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 the order is served to the tenant.

I find that the tenant was served with Notice of this hearing via registered mail and, pursuant to section 71(2), that she was sufficiently served, as the landlord could not be confident that the tenant vacated the rental unit.

As late as January 22, 2011, the tenant paid some rent to the landlord, in the sum of \$750.00. The landlord is not confident that the tenant has provided him with legal possession of the unit and, in the absence of evidence to the contrary, I find that the tenant caused the landlord to lose rent revenue for February, 2011, in the sum of \$1,900.00.

I find that the landlord is entitled to unpaid rent for January, 2011, in the sum of \$1,150.00.

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.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$950.00, in partial satisfaction of the monetary claim.

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 \$3,100.00, which is comprised of \$3,150.00 in unpaid January rent, loss of February rent revenue and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$950.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$2,150.00**. 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 22, 2011.

Residential Tenancy Branch