



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 landlord provided affirmed testimony that they were present at the rental unit on March 15, 2011, when the male tenant received his registered mail that contained copies of the Application for Dispute Resolution and Notice of Hearing. A Canada Post tracking number was provided as evidence of service.

The female tenant was served in the same manner but it is believed that she no longer lived at the unit effective March 15, 2011. The mail sent was signed as accepted by her co-tenant, who returned the mail to the landlord. The landlord then mailed the Notice and hearing package again, but the mail was not received by the female tenant.

Service of an application requesting a monetary Order must be completed by either registered mail or personal delivery; as this did not occur, the female tenant cannot be found to have been served. The female tenant has been served with notice of this hearing in relation to the Order of possession, as her co-tenant received notice of the hearing.

These documents are deemed to have been served in accordance with section 89 of the Act; however the male tenant did not appear at the hearing.

Preliminary Matter

On March 25, 2011, the landlord amended their application and served it via registered mail on that date to an address that had just been provided by the male tenant. I determined that the tenant had not been served with the amended application within the time frame required under the Act; as it would not have been deemed served until the day prior to this hearing. Therefore, the amended application was not considered.

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

A fixed-term tenancy commenced on June 19, 2010; rent was \$1,650.00 per month, due on the first day of each month. A deposit in the sum of \$825.00 was paid at the start of the tenancy. Utilities were to be paid by the tenant.

A copy of the signed tenancy agreement was submitted as evidence; the rent due date was not included in the document; the landlord testified that rent was due on the first day of each month.

The landlord stated that on March 2, 2011, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of March 12, 2011, was served by posting to the rental unit door. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,650.00 within five days after the tenant was assumed to have received the Notice.

The Notice also indicated that the tenants were presumed to have accepted that the tenancy was 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 tenants did not pay March rent owed and on March 15, 2011, the landlord was able to establish that the tenants had vacated the rental unit. The landlord's requested an Order of possession so they may be confident of their legal right to the unit.

The landlord submitted a copy of a utility bill for City of Victoria services that was personally given to the female tenant on February 25, 2011. The landlord is claiming costs from September 23, 2010 to January 24, 2011 in the sum of \$194.66; they do not yet have verification of the costs for the balance of utilities owed to the end of the tenancy.

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 tenants received the Notice to End Tenancy on March 5, 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 tenants are deemed to have received this Notice on March 5, 2011, I find that the earliest effective date of the Notice is March 15, 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 March 15, 2011.

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 March 15, 2011, which they did, 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 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 the order is served.

In the absence of evidence to the contrary, I find that the tenants did not pay rent in the amount of \$1,650.00 for March, 2011, and that the landlord is entitled to compensation in that amount.

I find, based on the tenancy agreement and copy of the utility bill submitted as evidence that the tenants owed utility costs from September 23, 2010 to January 24, 2011, inclusive, in the sum of \$194.66 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.

Section 72(2) of the Act provides a dispute resolution officer with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant. Therefore, I find that the landlord may retain the tenant's security deposit in the amount of \$825.00, in partial satisfaction of the monetary claim.

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 \$1,894.66, which is comprised of \$1,650.00 in unpaid March, 2011, rent; \$194.66 utility costs from September 2010 to January 24, 2011, inclusive 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 in the amount of \$825.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,069.66. 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: March 31, 2011.

Residential Tenancy Branch