



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 provided affirmed testimony that on March 22, 2011, at approximately 8:30 a.m. he personally served the tenant's adult son with copies of the Application for Dispute Resolution and Notice of Hearing, at the rental unit. The adult son resides with his mother in the rental unit.

These documents are deemed to have been served in accordance with section 89(2)(c) of the Act; for the purposes of an application requesting an Order of possession, however the tenant did not appear at the hearing.

Preliminary Matter

As the tenant has been served with Notice of a hearing for the purposes of an Order of possession, the monetary claim was dismissed with leave to reapply.

Service of an application requesting a monetary Order must be either personally delivered directly to the respondent or sent by registered mail to the address where the tenant resides; as provided by section 89(1) of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenant has lived in the rental unit since August 1997. The tenant did not pay December, 2010 rent and did not pay March, 2011, rent owed in the sum of \$535.00 per month.

The caretaker stated that on March 9, 2011 a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of March 20, 2011, was served by posting to the rental unit door. A facsimile confirming service completion was sent by the caretaker to the agent; which indicated he posted the Notice at 11:24 a.m.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,225.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was 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 did not dispute the Notice and did not pay December, 2010; January 2011 and April; 2011, rent owed.

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 March 12, 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 March 12, 2011, I find that the earliest effective date of the Notice is March 22, 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 22, 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 March 22, 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 2 days after service of the Order to the tenant.

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 \$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 \$50.00. 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: April 12, 2011.

Residential Tenancy Branch