



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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.

Preliminary Matter – Service

The landlord provided affirmed testimony that on November 21, 2011 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via courier service, to the rental unit address. The landlord was asked to provide a copy of the courier service receipt, signed by the tenant, confirming receipt of the package. The landlord was provided until noon on December 08, 2011, to submit proof of service of the Notice of hearing package. A copy of the tenancy agreement was also requested.

A copy of a UPS proof of delivery tracking information was submitted by the landlord which indicated that the Notice of hearing package was delivered to the tenant's front door on November 22, 2011. The tenant did not sign, accepting the delivery. Therefore, in the absence of service to the tenant via either personal delivery or registered mail, requiring a signature, I find that the tenant was not served as provided by section 89(1) of the Act, for the purpose of an application requesting monetary compensation.

I find, pursuant to section 89(2) that the tenant was served with Notice of this hearing, for the purpose of an application requesting an Order of possession. The hearing package was left at the tenant's front door, which I find, pursuant to section 71(2) of the Act, was sufficient service of the application.

I find that the monetary claim is dismissed with leave to reapply.

These documents are deemed to have been served in accordance with section 89(2) 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 filing fee costs?

Background and Evidence

The tenancy agreement submitted as evidence requires the tenant to pay monthly rent of \$1,300.00. The agreement is bereft of detail, but does indicate rent is due on the first day of each month.

The landlord stated that on November 4, 2011, at approximately 6:30 p.m. he personally served the tenant a Ten (10) Day Notice to End Tenancy for non-payment of rent, which had an effective date of November 14, 2011. The landlord submitted a proof of service document which indicated that he served the Notice a second time, on November 16, 2011, by posting it to the door, with his daughter present as a witness. At the same time the landlord also placed a copy of the Notice in the tenant's mail box.

The Act determines that the tenant was served on November 4, 2011; the date of personal delivery. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$9,500.00 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 unit by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord testified that since July 2010, the tenant has failed to pay \$9,300.00 rent. The tenant paid \$1,300.00 in December; but not the full amount of arrears owed.

Analysis

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 November 14, 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 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.

Based on these determinations 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.

The monetary claim is dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 07, 2011.

Residential Tenancy Branch