



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 and Cause, 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 on December 16, 2011, copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail at the address noted on the Application. On December 19, 2011, the male landlord signed, accepting the mail for the tenants, who reside downstairs.

The landlord has one mail box and delivers the tenants their mail by placing it under their door. At times the tenants will obtain the keys to the mailbox, if they believe urgent mail may be in the mailbox.

On December 20, 2011, the landlord served each tenant again, by registered mail, to the address on the application. When the mail notices arrived from Canada Post on December 22, 2011, the landlord placed them on the door to the rental unit; the tenants removed the notices from the door. Canada Post tracking numbers were provided as evidence of service to each tenant.

These documents are deemed to have been served in accordance with section 89 of the Act and sufficiently served as provided by section 71 of the Act; however the tenants did not appear at the hearing.

Preliminary Matter

The Notice ending tenancy for cause was not considered, as the 10 Day Notice issued provided sufficient cause to end the tenancy.

The application was amended to include unpaid January 2012 rent owed.

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?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on March 15, 2010; rent is \$650.00 due on the 31st day of each month. A copy of the signed tenancy agreement was supplied as evidence.

The landlord stated that on November 30, 2011, in the evening, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 9, 2011, was served by posting to the tenant's door. A neighbour was present as a witness; photographs were taken of the landlord posting the notice and were submitted as evidence.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$560.00 within five days after the tenants were 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 have paid \$1,245.00 owed from November 2011 to January 2012; inclusive. The landlord is owed a balance of \$705.00. Since October 31, 2011, payments in the sum of \$375.00, \$40.00; \$80.00; \$100.00; \$325.00 and \$325.00 were made toward rent owed in the sum of \$1,950.00.

The landlord issued another 10 day Notice ending tenancy to the tenants on January 2, 2012, by posting it to the door.

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 December 3, 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 December 3, 2011, I find that the earliest effective date of the Notice is December 23, 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 December 23, 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 December 23, 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 tenants 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.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$705.00 for November 2011 and January, 2012, and that the landlord is entitled to compensation in that amount.

On January 1, 2012, the landlord served the tenants with another 10 Day Notice ending tenancy. That Notice does not cancel the previous Notice issued, that was before me during this hearing.

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 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 \$755.00, which is comprised of unpaid December 2011, and January 2012 rent 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 \$755.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: January 03, 2012.

Residential Tenancy Branch