



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, OPC, MNR, MNSD, 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, 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 on January 19, 2012, he and his spouse attempted to hand-deliver copies of the Application for Dispute Resolution and Notice of Hearing to the tenant at her door; but she closed the door and refused to take the package.

On January 20, 2012, the landlord then mailed the hearing package to the tenant, via registered mail to the address noted on the Application. The landlord has a tracking number for the mail, which was delivered to the shared mailbox, for the tenant.

These documents are deemed to have been served, on the fifth day after mailing, in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

Preliminary Matter

No testimony was required in relation to an Order of possession based on cause. Only the 10 Day Notice Ending Tenancy for Unpaid Rent was 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 for unpaid rent?

May the landlord retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on November 1, 2011; rent is \$675.00 due on the first day of each month. A deposit in the sum of \$337.50 was paid.

The landlord stated that on December 28, 2011, between 3 and 4 p.m., the landlord and his spouse hand-delivered a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 28, 2011, to the tenant at the rental unit door. The Notice was given to the tenant.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$675.00 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 pay December 2011, rent and did not pay January, 2012, rent owed.

Analysis

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 28, 2011, I find that the earliest effective date of the Notice was January 7, 2012.

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 January 7, 2012.

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 January 12, 2012, pursuant to section 46 of the Act.

The Notice supplied as evidence included the landlord's printed name, but was not signed by the landlord. Section 68 of the Act provides:

Director's orders: notice to end tenancy

- 68** (1) *If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that*
- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and*
 - (b) in the circumstances, it is reasonable to amend the notice.*

(2) Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,
(a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or
(b) set aside or amend a notice given under this Act that does not comply with the Act.

It is reasonable to accept that the tenant knew who had given her the Notice; as the landlords name was clearly printed on the Notice. Therefore, I find that the Notice is amended to meet the requirements of section 52 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.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,350.00 for December, 2011 and January 2012, 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.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$337.50, 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 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 \$1,400.00, which is comprised of 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.

The landlord will be retaining the tenant's security deposit in the amount of \$337.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,062.50. 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.

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 27, 2012.

Residential Tenancy Branch