



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, 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 and a monetary Order for unpaid rent.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

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?

Background and Evidence

The tenancy commenced on April 1, 2011; rent is \$735.00 due on the first day of each month. A deposit in the sum of \$367.50 was paid. A copy of the signed tenancy agreement was supplied as evidence.

The landlord stated that on November 8, 2011, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of November 18, 2011, was served by posting to the tenant's door, with a co-worker present as witness.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$430.00 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 agreed she has not paid \$430.00 that was due in August 2011.

The landlord attempted to have the tenant agree to a repayment schedule; she would not do so. A copy of the unsigned agreement was supplied as evidence.

The tenant testified that she did receive the Notice ending tenancy, but that she received it sometime after Christmas. The tenant could not recall exactly when she first saw the Notice. The tenant has not disputed the Notice.

Rent for December, 2011 and Januarys, 2012 was paid; copies of receipts issued for use and occupancy only were supplied as evidence.

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 November 11, 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 November 11, 2011, I find that the earliest effective date of the Notice is November 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 November 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 November 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 to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid August, 2011, rent in the amount of \$430.00 and that the landlord is entitled to compensation in that amount.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. The 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 \$430.00, which is comprised of unpaid august 2011 rent.

Based on these determinations I grant the landlord a monetary Order in the sum of \$430.00. 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.

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 31, 2012.

Residential Tenancy Branch