



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 convened 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 male Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to each Respondent at the rental unit, via registered mail, on December 14, 2011. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenants did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The male Agent for the Landlord stated that this tenancy began on May 01, 2011; that the Tenant is required to pay monthly rent of \$900.00 by the first day of each month; and that the Tenant paid a security deposit of \$450.00.

The male Agent for the Landlord stated that on December 01, 2011 the Tenant had not paid \$900.00 in rent that was due on December 01, 2011 plus a \$25.00 late fee. He stated that the rent for December was paid, in full, on December 12, 2011.

The female Agent for the Landlord stated that she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of December 12, 2011, on the door of the rental unit on December 02, 2011.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$900.00 by the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant had not paid the rent that was due on December 01, 2011 and that the rent was not paid until December 12, 2011. As all of the rent for December has now been paid, I dismiss the Landlord's claim for compensation for unpaid rent.

I note that the Landlord did not raise the issue of whether rent has been paid for January of 2012 and that matter was not considered at this hearing.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. As rent was not paid when it was due, I find that the Landlord had grounds to serve a Notice to End Tenancy for Unpaid Rent. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Notice to End Tenancy for Unpaid rent, served pursuant to section 46 of the *Act*, was posted at the rental unit on December 02, 2011.

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 December 05, 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 05, 2011, I find that the earliest effective date of the Notice was December 15, 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 15, 2011.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. As the Tenant did not pay the overdue rent until December 12, 2011, which is more than five days after he is deemed to have received the Notice, and I have no evidence that he filed an Application for Dispute Resolution seeking to set aside the Notice, I find that the Tenant accepted that the tenancy ended on the effective date of the Notice, pursuant to section 46(5) of the *Act*. On this basis I find that the Landlord is entitled to an Order of Possession.

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

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon 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. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$50.00 from the Tenant's security deposit, in full satisfaction of the monetary claim.

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 04, 2012.

Residential Tenancy Branch