



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 requested 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 February 21, 2012, copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the tenant at the rental unit, at approximately 5 p.m. with a friend of the landlord's present as a witness. The female tenant was present, but she was not served with a hearing package.

These documents are deemed to have been served to the male tenant in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

As the female tenant was not served with Notice of the hearing, the claim against her is dismissed.

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 tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on January 15, 2011; rent is \$650.00 each month, due on the first day of the month. A deposit in the sum of \$325.00 was paid at the start of the tenancy.

The landlord testified that on February 11, 2011, at approximately 3 p.m. with a friend present as a witness, a Ten (10) Day Notice to End Tenancy for non-payment of Rent, which had an effective date of February 27, 2012, was served by posting to the tenant's door.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$650.00 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.

On February 24, 2012, the tenant paid February rent owed, by cash. The landlord has yet to issue a receipt for that payment. Yesterday he landlord saw the tenant and told him to attend today's hearing; the tenant continues to reside in the unit and did not pay March rent owed. The landlord has claimed unpaid March, 2012, rent.

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 February 14, 2012.

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 February 14, 2012, I find that the earliest effective date of the Notice is February 27, 2012; the date indicated on the Notice.

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 February 27, 2012, 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 rent in the amount of \$650.00 for March, 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 plus interest, in the amount of \$325.00, 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 \$700.00, which is comprised of \$650.00 in unpaid March, 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 plus interest, in the amount of \$325.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$375.00. 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 claim against the female tenant is dismissed.

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: March 06, 2012.

Residential Tenancy Branch