



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNDC, FF

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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, 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 agent for the landlord provided affirmed testimony that on February 28, 2012; 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. The landlord has copies of the registered mail receipts for each of the tenants. The day after the mail was sent the landlord went to the unit and spoke with tenant N.M. who had his copy of the hearing package.

These documents are deemed to have been served in accordance with section 89 of the Act; however neither tenant appeared at the hearing.

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 and loss of rent revenue?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on November 1, 2011; rent is \$875.00 due on the first day of each month. A deposit in the sum of \$437.50 was paid.

The landlord stated that on February 16, 2012, before 12 noon, a Ten (10) Day Notice to End Tenancy for non-payment of Rent, which had an effective date of February 29, 2012, was served by posting to the tenant's door.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$275.00 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 owed \$50.00 January, 2012, rent and did not pay \$175.00 of February, 2012, rent owed. The tenants did not pay 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 tenants received the Notice to End Tenancy on February 19, 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 19, 2012, I find that the earliest effective date of the Notice is February 29, 2012.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice to End Tenancy that required the tenant to vacate the rental unit on February 29, 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 tenants 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 tenants.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$1,150.00 for January (\$50.00,) February (\$125.00) and March, 2012 (\$875.00,) 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 tenants for the cost of this Application for Dispute Resolution.

Section 72(2) of the Act provides a dispute resolution officer with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant.

Therefore, with the agreement of the landlord, I find that the landlord may retain the tenant's security deposit in the amount of \$437.50, in partial satisfaction of the monetary claim.

I note that the landlord has used a Notice ending tenancy that is not in the current form; while it contains the required content, the landlord is advised to utilize the most current form, found on the Residential Tenancy branch web site.

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 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 \$1,200.00, which is comprised of \$1,150.00 in unpaid 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 \$437.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$762.50. 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: March 14, 2012.

Residential Tenancy Branch