



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 agent for the landlord stated that on May 25, 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. A Canada Post tracking number and receipt for each tenant was provided as evidence of service. The landlord checked the Canada Post web site and determined that the male and female tenants each received their packages on May 28, 2012.

These documents are deemed to have been served in accordance with section 89 of the Act; however the Tenant did not appear 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?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

A copy of the tenancy agreement supplied as evidence indicated that the tenancy commenced on October 1, 2011; rent is \$940.00 due in advance on or before the first day of each month. A deposit in the sum of \$470.00 was paid on September 20, 2011.

The tenants failed to pay April and May rent, 2012, rent on time.

The building manager provided affirmed testimony that on May 2, 2012, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of May 12, 2012, was served by posting to the door. The Notice was posted at approximately 10 a.m. with the manager's spouse present as a witness.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,880.00 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 tenant filed an Application for Dispute Resolution within five days.

On May 4, 2012, the tenants paid April rent owed and a receipt for use and occupancy was issued; a copy of the receipt was provided as evidence.

On May 30, 2012, the tenants paid May rent owed; another use and occupancy receipt was issued; that copy was provided as evidence.

The tenants paid June rent and were given a 3rd receipt for use and occupancy.

The tenants do not currently owe the landlord 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 May 5, 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 tenants are deemed to have received this Notice on May 5, 2012, I find that the earliest effective date of the Notice is May 15, 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 May 15, 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 tenants to vacate the rental unit on May 15, 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 tenants 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.

Although the tenants paid rent, it was not paid in full within five days of receipt of the Notice to end tenancy. The landlord has issued receipts for use and occupancy, which indicated that the tenancy was not reinstated.

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 sum of \$50.00; a balance in the sum of \$420.00 will be disbursed as provided by the Act.

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 tenants, 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 for filing fee costs, which will be deducted from the deposit.

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: June 15, 2012.

Residential Tenancy Branch