



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, 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 June 25, 2012, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service.

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.

Preliminary Matter

At the start of the hearing the landlord withdrew the monetary claim; the tenant did not pay rent owed within 5 days but the landlord is not pursuing the monetary claim. The tenant has signed a mutual agreement to end the tenancy effective August 31, 2012, at 1 p.m. a copy of the agreement was supplied by the landlord. The landlord also withdrew the request for filing fee costs.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Background and Evidence

The tenancy agreement requires the tenant to pay monthly rent of \$649.00 on the first day of each month. The tenant paid a deposit in the sum of \$317.50. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on June 5, 2012, a 10 Day Notice to End Tenancy for Unpaid Rent, which had an effective date of June 13, 2012 was served by posting to the tenant's door.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$933.56 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 did not dispute the Notice, did not pay rent owed within 5 days and has signed a mutual agreement to end the tenancy effective August 31, 2012. The landlord requested an Order of possession effective the date of the mutual agreement.

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 June 8, 2012.

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 June 18, 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.

As the tenant has not disputed the Notice and has not paid all of the rent due, I find that the tenant did not exercise 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 August 31, 2012, at 1 p.m.

The deposit will be disbursed in accordance with the Act.

Conclusion

The landlord has been granted an Order of Possession that is effective at 1 p.m. on August 31, 2012. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 16, 2012.

Residential Tenancy Branch