



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 and male tenant were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

The landlord testified that the female tenant was personally served with Notice of the hearing on August 13, 2012, at the rental unit, with a witness present. Therefore, I determined that the female tenant had been served with Notice of the hearing.

Preliminary Matters

The tenant indicated that he had received only a portion of the hearing package; he also confirmed that he had received the landlord's application, Notice of the hearing and the evidence submission made by the landlord.

The application was amended to include a claim for unpaid September, 2012, rent.

The landlord indicated in the details of the dispute section of the application that they were applying to retain the deposit.

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 September 15, 2012; rent is \$600.00 due on the first day of each month. A deposit in the sum of \$300.00 was paid. A copy of a signed tenancy agreement was supplied as evidence.

The tenant confirmed receipt of a Ten Day Notice to End Tenancy for Unpaid Rent for non-payment of rent, which had an effective date of July 17, 2012. The Notice was left in the tenant's mail slot on August 17, 2012.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$600.00 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 they filed an Application for Dispute Resolution within five days.

The tenant confirmed that they owe the landlord \$300.00 July, 2012 rent and that August and September 2012 rent has not been paid; totalling \$1,500.00.

Analysis

Section 90 of the Act stipulates that a document that is placed in the mail slot 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 July 20, 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 July 20, 2012, I find that the earliest effective date of the Notice is July 30, 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 July 30, 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 July 30, 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 the tenant has confirmed that rent was not paid within 5 days of July 20, 2012 and that the Notice was not disputed. 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 two days after the order is served to the tenants.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$1,500.00 for July, August and September, 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 tenants 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 amount of \$300.00, 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 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 \$1,550.00, which is comprised of unpaid July, August and September, 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 in the amount of \$300.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,250.00. 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 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: September 12, 2012.

Residential Tenancy Branch