



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, 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 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 January 10, 2013 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 on the 5th day after mailing, in accordance with section 89 and 90 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?

Is the landlord entitled to filing fee costs?

Background and Evidence

A copy of the signed tenancy agreement was supplied as evidence. The tenancy commenced on February 1, 2012, rent was \$1,200.00 due on the first day of each month.

The landlord stated that on December 21, 2012 a Ten Day Notice to End Tenancy for Unpaid Rent, which did not include an effective date, was served by posting to the tenant's door in the early afternoon. An employee of the landlord's was present when the Notice was posted.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,500.00 rent 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 and did not pay January 2013 rent owed. The landlord spoke with the tenant approximately 1 week ago and the tenant told the landlord she was not yet vacating and preferred the landlord go through the legal process. The tenant indicated she would move out by the end of January.

The tenant did not pay \$300.00 owed in November, 2012 and did not pay either December 2012 or January 2013, rent. The landlord has claimed compensation in the sum of \$2,700.00 in unpaid rent plus \$75.00 for NSF fees. Copies of the NSF cheques were supplied as evidence.

The tenancy agreement signed by the parties did not include a term requiring payment of fees.

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 December 24, 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 December 24, 2012, I find that the earliest effective date of the Notice was January 3, 2013.

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 January 13, 2013.

Section 68 of the Act provides:

Director's orders: notice to end tenancy

68 (1) *If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that*

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

*(b) in the circumstances, it is **reasonable to amend** the notice.
(2) Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,
(a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or
(b) set aside or amend a notice given under this Act that does not comply with the Act.*

(Emphasis added)

Therefore, as the tenant was given the Notice which clearly required the tenant to pay the rent owed within 5 days, or that she dispute the Notice, I find it is reasonable to amend the Notice to include an effective vacancy date. The tenant has not paid the rent and did not dispute the Notice. The Notice indicates that an error on the Notice does not make it invalid; the tenant should have understood the Notice required that she vacate the unit if rent was not paid as required.

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 January 13, 2013, 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 it is served to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$2,700.00 for November 2012 to January 2013, inclusive, 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 \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord has been granted an Order of possession that is effective **two days after it is served upon 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.

Based on these determinations I grant the landlord a monetary Order in the sum of \$2,750.00. 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 for NSF fees is dismissed as the tenancy agreement did not include a term imposing fees.

Conclusion

The landlord is entitled to an Order of possession and monetary Order.

The claim for NSF fees is dismissed.

The landlord is entitled to filing fee costs.

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: January 30, 2013

Residential Tenancy Branch

