



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OPR, MNR, MNSD, FF

Introduction

This was a cross-application hearing.

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 the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied to cancel a Notice ending tenancy for unpaid rent; however the tenant did not attend the hearing.

The landlord provided affirmed testimony that January 17, 2013 copies of the Application for Dispute Resolution and Notice of Hearing was personally served to the tenant, who came to the landlord's door at approximately 4 p.m. Both landlords were present at the time 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.

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 tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The fixed-term tenancy commenced on November 15, 2012; rent was \$820.00 per month, a deposit in the sum of \$410.00 was paid.

The landlord stated that at 12:30 p.m. on January 7, 2013, with the assistance of a Victoria Police officer, K.L., a 10 Day Notice to End Tenancy for Unpaid Rent, which had an effective date of January 17, 2013, was personally served to the tenant, at the rental unit door.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,200.00 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.

On January 10, 2013 the tenant applied to cancel the Notice; the tenant did not attend the hearing and is apparently in the process of vacating the rental unit.

The landlord said that the tenant did not pay November 2012 rent (\$400.00,) December 2012 rent (\$410.00,) January 2013 rent (\$410.00,) and February rent (\$820.00.) The tenant has not given the landlord keys to the unit and the landlord does not yet have possession of the unit.

Analysis

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 17, 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. The tenant disputed the Notice but has failed to attend this hearing in support of her claim rent has been paid. Therefore, I find that the tenant's application is dismissed.

There was no evidence before me that the rent had been paid.

Therefore, as the rent has not been paid and the tenant failed to attend the hearing in support of her application, 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 two days after the order is served.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$2,040.00 from November 2012 to February 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.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$410.00, in partial satisfaction of the monetary claim.

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 for \$1,680.00. 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

Conclusion

The landlord has been granted an Order of Possession.

The landlord has been granted a monetary Order.

The landlord may retain the deposit.

The landlord is entitled to filing fee costs.

The tenant's application is dismissed.

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: February 04, 2013

Residential Tenancy Branch

