



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, MT, CNR, RP, RR, 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, compensation for damage or loss under the Act, 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 for more time to apply to cancel a Notice ending tenancy, to cancel a Notice ending tenancy for unpaid rent, an Order the landlord make emergency repairs, that the tenant be allowed to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee cost from the landlord.

The landlord provided affirmed testimony that on January 15, 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 copy of the 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.

The landlord received Notice of the tenant's hearing.

Preliminary Matter

The hearing commenced at 9 a.m. and ended at 9:10 a.m. The tenant did not attend the hearing in support of her application or to dispute the landlord's application. Therefore, I dismissed the tenant's application.

The landlord withdrew the portion of the application claiming compensation for damage or loss under the Act.

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

A copy of the tenancy agreement supplied as evidence indicated that the tenancy commenced on December 15, 2012; rent is \$400.00 per month, due on the first day of each month. A deposit in the sum of \$200.00 was paid.

The landlord stated that on January 3, 2013 a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of January 13, 2013 was personally served by the landlord. The landlord went to the rental unit at noon on January 3, 2013, the tenant had 2 people with her; the landlord's spouse was present as a witness when service occurred.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$400.00 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.

The tenant did not pay the rent owed and did not dispute the Notice within 5 days.

The landlord has claimed compensation for unpaid January and February, 2013 rent in the sum of \$800.00.

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 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. The tenant made a late application to dispute the Notice; her application has been dismissed, as she failed to attend the hearing in

support of her application. There was no evidence before me that the tenant has paid the January and February 2013 rent that was due.

Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. Further, as the tenant's application to cancel the Notice to end tenancy is dismissed and the landlord has requested an Order of possession, find that the landlord is entitled to an Order of possession based on section 55(1) of the Act.

On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$800.00 for January and February 2013, 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 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 \$200.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order in the sum of \$650.00. 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 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.

Conclusion

The landlord has been issued an Order of possession and monetary Order.

The landlord may retain the deposit.

The landlord is entitled 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: February 07, 2013

Residential Tenancy Branch

