



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 dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and to recover the filing fee.

The landlords appeared; the tenant did not appear.

The landlords gave evidence that they served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on January 18, 2013. The landlord supplied the registered mail receipt and customer receipt, with tracking number.

I find the tenant was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlords were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue #1-The landlords said that the listed tenant, CC, is the spouse of the tenant, RC, originally signing the tenancy agreement; however RC vacated the rental unit on November 30, 2012, leaving CC and their children residing in the rental unit. CC, according to the landlords, has always resided in the rental unit.

Preliminary Issue #2-There was no evidence from the landlords contained in the hearing file; however the landlords said that they provided evidence via facsimile transmission to the Residential Tenancy Branch ("RTB"). The landlords said that they had proof of the facsimile transmission being received by the RTB.

I allowed the landlords to provide to me all their evidence after the hearing, including the proof that the facsimile transmission to the RTB was received, with the understanding that this evidence was required to be received by the end of the business day. The landlords complied and I therefore accepted their evidence for consideration.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for the rental unit due to unpaid rent, a monetary order, and to recover the filing fee?

Background and Evidence

The landlord gave evidence that this tenancy began on January 15, 2007, monthly rent is \$1450.00, and a security deposit of \$725.00 was paid by the tenant at the beginning of the tenancy.

The landlord gave evidence that on January 3, 2013, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by leaving it with the tenant, listing unpaid rent of \$1450.00 as of January 1, 2013. The effective vacancy date listed on the Notice was January 12, 2013.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to January 13, 2013.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

The landlord stated that the tenant made a payment of \$800.00 the day after receiving the Notice, but has refused to pay the balance of \$650.00 for January 2013 or the rent due for February 2013. As of the date of the hearing, the tenant owed \$2100.00 in unpaid rent.

The landlord's relevant evidence included a copy of the Notice, proof of service of the hearing documents, and the original tenancy agreement.

I have no evidence before me that the tenant applied to dispute the Notice.

Analysis

Based on the relevant oral and written evidence and on a balance of probabilities, I find as follows:

I find that a tenancy was created between CC and the landlords when CC's spouse vacated the rental unit and CC remained with her children.

I find the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the all the outstanding rent or apply to dispute the Notice within five days of service and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlords are entitled to an order of possession for the rental unit pursuant to section 55 of the Act, effective two days after service of the order upon the tenant.

I also find that the landlords have established a total monetary claim of \$2150.00 comprised of outstanding rent of \$2100.00 through February, 2013, and the \$50.00 filing fee paid by the landlords for this application.

Conclusion

I grant the landlords a final, legally binding order of possession for the rental unit, which is enclosed with the landlords' Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. Costs of enforcement may be recovered from the tenant.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$2150.00, which I have enclosed with the landlords' Decision.

Should the tenant fail to pay the landlords this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. Costs of enforcement may be recovered from the tenant.

This decision 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* and is being mailed to both the applicant and the respondent.

Dated: February 12, 2013

Residential Tenancy Branch

