



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 requested 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 25, 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. The landlord has a copy of the Canada Post tracking number and receipt, as evidence 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?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced approximately 5 months ago; rent is \$700.00 per month, due on the first day of each month. A tenancy agreement was not signed. A security deposit was not paid.

The landlord receives \$350.00 per month by direct deposit from a government agency; the tenant is to pay the balance of rent owed.

The landlord stated that on January 15, 2013 a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of January 24, 2013, was personally served by the agent to the tenant. The tenant received 2 pages of the Notice. A copy of a proof of service document, signed by the tenant acknowledging receipt of the Notice, was supplied as evidence.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$700.00 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 landlord testified that they had received \$350.00 for January rent owed; the application indicated that January rent in the sum of \$700.00 was owed. The landlord believed that \$350.00 was owed for December, 2012.

Analysis

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 January 15, 2013; the day she signed acknowledging receipt, I find that the earliest effective date of the Notice is **January 25, 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 25, 2013**.

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 25, 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 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 \$350.00 for January 2013, and that the landlord is entitled to compensation in that amount. The balance of the claim is dismissed, as an accounting of rent paid and owed was not supplied and the landlord's recollection was somewhat tentative.

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.

Based on these determinations I grant the landlord a monetary Order in the sum of \$400.00. 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 granted an Order of Possession and a monetary order for unpaid January 2013 rent.

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: February 20, 2013

Residential Tenancy Branch

