



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.

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent issued on January 31, 2013 and for return of the deposits paid.

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

The landlord provided affirmed testimony that on February 16, 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 a Canada Post tracking number and receipt was provided as evidence of service to the rental unit address.

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.

The landlord confirmed receipt of the tenant's Notice of Hearing package.

Preliminary Matters

As the tenant failed to attend the hearing in support of her application made on February 4, 2013, I dismissed her application.

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 pet and security deposits paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy at this unit commenced on December 22, 2012; a tenancy agreement was signed. Rent was \$1,147.00 per month, due by the first day of each month. Pet and security deposits in the sum of \$547.50 each were paid. The landlord said the deposits were transferred from another tenancy he had with the tenant.

The landlord stated that on January 31, 2013 a Ten Day Notice to End Tenancy for Unpaid Rent was hand-delivered to the tenant's adult daughter, who resides with the tenant. The daughter signed the Notice, acknowledging receipt. A copy of the Notice was supplied by the tenant, with her application.

The Notice had an effective date of February 11, 2013. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,981.00 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 filed to dispute the Notice but did not attend the hearing in support of her application or in response to the landlord's application.

The landlord has claimed compensation for pro-rated rent from December 22, 2012 to December 31, 2012 inclusive in the sum of \$371.00 plus unpaid January and February 2013 rent in the sum of \$2,294.00. The landlord said the tenant has not paid any rent since moving into this unit.

Analysis

Based on the affirmed testimony of the landlord and in the absence of the tenant who was served with Notice of this hearing, I find that the landlord's claim has merit.

As the tenant failed to attend the hearing in support of her application to cancel the Notice, her application has been dismissed and I find, pursuant to section 55(1) of the Act, that the landlord is entitled to an Order of possession.

Section 55(1) of the Act provides:

55 *(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice

As the Notice was received by the tenant effective January 31, 2013; given to an adult with whom she resides, I find that the Notice was served effective that date. Therefore, I find that the Notice was effective on February 11, 2013; the date indicated on the Notice.

Based on the testimony of the landlord I find that the landlord is entitled to compensation in the sum of \$2,665.00 for unpaid rent from December 22, 2012 to February 28, 2013, inclusive; (pro-rated rent for December in the sum of \$371.00 plus \$2,294.00 for January and February 2013.) There was no evidence supplied by the tenant indicating she had paid the rent that was due.

I find that the landlord may retain the pet and security deposits, in the sum of \$1,095.00, in partial satisfaction of the claim.

As the landlord's application has merit, I find that the landlord is entitled to the \$50.00 filing fee cost.

Based on these determinations I grant the landlord a monetary Order for the balance owed in the sum of \$1,620.00. 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 tenant's application is dismissed.

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

The landlord is entitled to retain the pet and security deposits paid.

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 28, 2013

Residential Tenancy Branch

