



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession and a monetary Order for unpaid rent.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

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?

Background and Evidence

A copy of the tenancy agreement supplied as evidence indicated that the tenancy commenced on June 1, 2012. Rent is \$1,200.00 per month. A deposit in the sum of \$600.00 was paid. The parties agreed that rent is due on the 1st day of each month.

The tenants confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid rent that was posted to their door on February 5, 2013. The Notice had an effective date of February 15, 2013.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,400.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the

date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The tenants confirmed that they made a \$600.00 payment on February 19 and that the balance of rent owed was paid on February 27, 2013. The tenants confirmed that March rent has yet to be paid.

The landlord stated that he does not wish to evict the tenants but that they need to pay the rent on time.

The landlord requested an Order of possession and understood that he could issue receipts for use and occupancy only until such time as he wishes to give the tenants written notice that the tenancy has been reinstated.

The landlord had claimed compensation for unpaid January and February, 2013 rent; which has now been paid. The tenants said that they can pay March rent owed today.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenants received the Notice to End Tenancy on February 8, 2013.

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 tenants are deemed to have received this Notice on February 8, 2013, I find that the earliest effective date of the Notice was February 18, 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 February 18, 2013.

Based on the acknowledgement of the tenants I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on February 18, 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 tenants did not pay the rent, in full, by February 13, 2014. The tenants did not dispute the Notice. Therefore; pursuant to section 46(5) of the Act, I find that the tenants 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 tenants.

The parties understood that the tenancy may continue, at the discretion of the landlord. The landlord may choose to issue rent payment receipts for use and occupancy until such time the landlord issues written notice to the tenants that the tenancy has been reinstated, at which time the Order of possession will no longer be enforceable.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenants**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The rent claimed in this application has been paid.

The landlord is entitled to an Order of possession.

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: March 21, 2013

Residential Tenancy Branch

