



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

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 for Unpaid Rent, a monetary Order for unpaid rent, to retain the security deposit, and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on March 4, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant, via registered mail at the address noted on the Application. The landlord testified that each tenant was sent an individual hearing package.

Registered mail is deemed served on the 5th day after mailing. These documents are deemed to have been served in accordance with section 89 of the Act; however neither tenant appeared at the hearing.

Preliminary Matter

The application was amended to include a claim for unpaid March 2013 rent in the sum of \$1,200.00.

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 tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on February 1, 2010; it was a 1 year fixed-term and is now a month-to-month term. Rent is \$1,200.00 per month, due on the 1st day of each month. A deposit in the sum of \$600.00 was paid at the start of the tenancy.

The landlord stated that on February 4, 2013, in the morning, a Ten Day Notice to End Tenancy for Unpaid Rent was posted to the tenant's door. The landlord took a friend with him, who witnessed service.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$3,600.00 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 Notice did not include an effective vacancy date.

On March 6, 2013 the male tenant sent the landlord a text message asking if he should send an invoice for his time to the tenancy branch. The landlord submitted this indicated that the tenant understood rent was due and that a hearing was going to be held.

The tenants have not paid rent since November, 2012. The landlord is claiming compensation in the sum of \$4,800.00; less the \$600.00 security deposit.

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 7, 2013.

Section 52 of the Act provides:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

The Notice did not provide the date by which the tenants must vacate; however the Notice did indicate that the tenants had 5 days to pay the rent or dispute the Notice.

Section 68 of the Act provides:

Director's orders: notice to end tenancy

68 (1) *If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that*

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and*
- (b) in the circumstances, it is reasonable to amend the notice.*

(2) Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,

- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or*
- (b) set aside or amend a notice given under this Act that does not comply with the Act.*

Therefore, I find that when the tenants received the Notice effective February 7, 2013, they understood rent must be paid or the Notice be disputed within 5 days, as these details are set out in the Notice. Further, the Notice indicated that if rent was not paid the tenants must vacate in ten days. Therefore, I find it is reasonable to amend the Notice to include an effective date of February 17, 2013.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on February 17, 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 tenants exercised either of these rights, 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 two days after service to the tenants.

In the absence of evidence to the contrary, I find that the tenants have not paid rent from December 2012 to March 2013, inclusive in the sum of \$4,800.00 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 tenants 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 \$600.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order in the sum of \$4,250.00 for in unpaid rent from December 2012 to March 2013 inclusive and \$50.00 filing fee costs. In the event that the tenants do not comply with this Order, it may be served on the tenants, 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 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 landlord has been granted an Order of possession.

The landlord is entitled to a monetary Order.

The landlord is entitled to retain the security deposit.

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: March 25, 2013

Residential Tenancy Branch

