



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 convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to the Tenant at the rental unit, via registered mail, on April 05, 2013. The Landlord submitted Canada Post documentation that corroborates this statement. The Agent for the Landlord stated that the package was unclaimed and was returned to him. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (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 and/or a monetary Order for unpaid rent?

Background and Evidence:

The Agent for the Landlord stated that the Tenant moved into the rental unit on June 01, 2008; that he agreed to pay monthly rent of \$100.00 by the first day of each month; and that he did not pay rent for January, March, or April of 2013. The Landlord submitted a bank statement with a variety of payments, which does not show a payment for January, March, or April of 2013.

The Agent for the Landlord stated that he posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of March 29, 2013 at the rental unit on March 19, 2013. The Notice declared that the Tenant owed \$200.00 in rent that was due on March 01, 2013.

Analysis

Based on the undisputed evidence, I find that the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$100.00 by the first day of each month and that the Tenant has not paid the rent for January, March, or April of 2013. As he is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant owes the Landlord \$300.00 in outstanding rent.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the undisputed evidence, I find that on March 19, 2013 a Notice to End Tenancy was posted at the rental unit, pursuant to section 46 of the *Act*, which declared that the Tenant must vacate the rental unit by March 29, 2013.

Section 90 of the *Act* stipulates that a document that is posted is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on March 22, 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 Tenant is deemed to have received this Notice on March 22, 2013, I find that the earliest effective date of the Notice was April 01, 2013.

Section 53 of the *Act* stipulates that if the effective date stated on 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 April 01, 2013.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

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.

Conclusion

I grant the Landlord 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.

As the Landlord has only made a claim for \$200.00 in unpaid rent plus the filing fee of \$50.00 and the Agent for the Landlord did not apply to increase the claim for unpaid rent at the hearing, I grant the Landlord a monetary Order for the full amount of his claim, which is \$250.00. 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.

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*.

Dated: April 30, 2013

Residential Tenancy Branch

