



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding David Burr Ltd.
and [tenant name suppressed to protect privacy]

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 has requested compensation for unpaid rent, an Order of Possession 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 March 25, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the rental unit address noted on the Application. The landlord has the Canada Post tracking number and receipt, as evidence of service.

The landlord checked the Canada Post web site and determined that the tenant signed, accepting the registered mail on the same date that it was received by Canada Post, March 25, 2013.

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 on January 1, 2012. Rent is \$675.00 due on or before the 1st day of each month. A deposit in the sum of \$337.50 was paid. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on March 6, 2013 the building manager, C.R. posted a Ten Day Notice to End Tenancy for Unpaid Rent to the tenant's door. The building manager completed the application for dispute resolution, on which he declared that he had posted the notice to the door on that date.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$775.00 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 effective March 16, 2013 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 paid \$575.00 in February and has not paid March or April rent. The landlord has claimed compensation in the sum of \$1,450.00 for unpaid rent from February to April 2013, inclusive.

The tenant remains in the rental unit.

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 tenant received the Notice to End Tenancy on March 9, 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 9, 2013, I find that the earliest effective date of the Notice is March 19, 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 March 19, 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 March 19, 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 the Order is served to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,450.00 from February to April 2013 inclusive 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 \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

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.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,500.00. 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.

Conclusion

The landlord is entitled to an Order of possession and a monetary Order for unpaid 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: April 17, 2013

Residential Tenancy Branch