



Dispute Resolution Services

Page: 1

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 made application for an Order of Possession for Unpaid Rent, a monetary Order 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 28, 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. The landlord has the Canada Post tracking number and checked the Canada Post web site, finding that the tenant signed accepting the mail on April 3, 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 December 20, 2004; a deposit in the sum of \$287.50 was paid; the landlord has not claimed against the deposit. A copy of the tenancy agreement was supplied as evidence.

Rent is currently \$710.00 per month, due on the first day of each month.

On March 6, 2013 the landlord issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent, which had an effective date of March 16, 2013. The landlord posted the Notice to the tenant's door at approximately 1 p.m. on March 6, 2012.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$754.00 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 owed \$44.00 in rent arrears dating back to a rent increase that took effect on October 1, 2012. The tenant did not pay \$399.00 of rent owed for March 2013 and the landlord is claiming that sum. The ledger supplied as evidence indicated that on March 14, 2013 someone, on behalf of the tenant, did make a \$355.00 payment toward the tenant's February rent arrears. Another \$355.00 payment made by a government agency left \$399.00 owed by the tenant for March 2013. No further rent payments were indicated. The ledger indicated that payments made since the Notice was issued were accepted for use and occupancy only.

The landlord supplied a copy of a January 7, 2013 letter from the tenant, giving 1 month's notice; however, he did not vacate and has continued to make some rent payments.

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 it 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 \$399.00 for March 2013, 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 tenant for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$449.00. 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 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 26, 2013

