



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 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 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 April 3, 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. A Canada Post tracking number and receipt was provided as evidence of service.

These documents are deemed to have been served on the 5th day after mailing, 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?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Preliminary Matters

On April 22, 2013 the landlord sent the tenant an amended application, via registered mail. The amended application would be deemed served on April 27, 2013. Residential Tenancy Rules of Procedure require a party to submit and serve an amended application at least 7 days prior to the hearing.

The landlord said he made an error in the sum of rent owed to the end of April, 2013 and he also included unpaid rent that will be owed in May. I have considered the amendment request for unpaid rent, to the end of April 2013 only; the landlord has leave to reapply for May 2013 rent, which is not yet due.

Background and Evidence

The tenancy commenced on December 1, 2012. Rent is \$2,700.00 per month, due on the first day of each month.

The landlord stated that on January 17, 2013 a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of January 16, 2013 was served by placing it on the door of the rental unit. The landlord put the Notice on the door in the afternoon.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,700.00 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 landlord said that the tenant has not paid any rent since December 2012. The landlord has claimed compensation in the sum of \$9,800.00, but the sum should have been \$10,800.00, to the end of April, 2013.

The landlord said that he and the tenant have had many text messages, back and forth, in relation to the rent owed. The tenant has wanted certain improvements made to the property but has not been given permission to make any deductions from the rent owed.

The landlord has been checking the property weekly and the tenant continues to reside on the property.

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 January 20, 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 January 20, 2013, I find that the earliest effective date of the Notice is January 30, 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 January 30, 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 January 30, 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 service to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$10,800.00 from January to April, 2013 inclusive, and that the landlord is entitled to compensation in that amount. I have allowed an increase in the sum claimed as the tenant would be aware that rent is \$2,800.00 per month and that she has not paid rent that is owed.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$100.00 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 \$10, 900.00. 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 has been granted a monetary Order for unpaid rent and an Order of possession.

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 29, 2013

Residential Tenancy Branch

