



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR; MNR; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenant.

The Landlord's agents and his lawyer gave affirmed testimony at the Hearing.

The Landlord's Lawyer testified that the Notice of Hearing documents were mailed to the Tenants, via registered mail, to the rental unit on May 3, 2013. A copy of the registered mail receipt and tracking number was provided in evidence. The Landlord's lawyer stated that the documents were returned unclaimed.

Based on the affirmed testimony and the documentary evidence provided, I am satisfied that the Tenant was duly served with the Notice of Hearing documents by registered mail in accordance with the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents. Failure to accept service does not change the service provisions of the Act. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in his absence.

Preliminary Matters

During the course of the Hearing, the Landlord's agents applied to withdraw the Landlord's application for a Monetary Order. I granted their application. The Landlord remains at liberty to re-apply for a Monetary Order for unpaid rent if he so desires.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord was the Tenant's step father. The Tenant's mother passed away on December 28, 2012.

The Landlord's agents testified that they jointly hold the Landlord's Power of Attorney. While making arrangements for the Landlord's wife's estate, they discovered that the Tenant had not been making rent payments. The Landlord's agents stated that in mid January, 2013, they found two letters to the Tenant, dated November 2012, outlining the outstanding rent that was due.

The Landlord and Tenant have an oral tenancy agreement. Monthly rent is \$1,100.00. The Tenant has not paid rent since August, 2012.

On March 19, 2013, the Landlord issued a Notice to End Tenancy for Unpaid Rent, which was posted to the Tenant's door on March 20, 2013. A copy of the Notice was provided in evidence.

The Tenant has not paid any of the outstanding rent.

Analysis

I accept that the Tenant was served with the Notice to End Tenancy by posting the Notice on the Tenant's door on March 20, 2013. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenant did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on April 2, 2013. I find that the Landlord is entitled to an Order of Possession.

The Landlord has been successful in his application and I find that he is entitled to recover the cost of the \$100.00 filing fee from the Tenant.

Conclusion

I hereby provide the Landlord with an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$100.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: May 30, 2013

Residential Tenancy Branch

