



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, 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, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were served to the Tenant at the rental unit, via registered mail, May 18, 2013. The Landlord submitted Canada Post documentation that corroborates this statement. 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.

The Landlord submitted documents to the Residential Tenancy Branch on June 03, 2013, copies of which were not served to the Tenant. As these documents were not served to the Tenant, they were not accepted as evidence for these proceedings.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; and to keep all or part of the security deposit?

Background and Evidence:

The Landlord stated that this tenancy began on February 10, 2012; that the Tenant is required to pay monthly rent of \$740.00 by the first day of each month; that the Tenant paid a security deposit of \$370.00; that the Tenant only paid \$610.00 in rent for February of 2013; and that the Tenant has paid no rent since February of 2013. The Landlord is seeking compensation for unpaid rent, in the amount of \$2,350.00.

The Landlord stated that on May 03, 2013 a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of May 13, 2013, was sent to the Tenant by

registered mail. Canada Post documentation was submitted that corroborates this testimony. The Notice declared that the Tenant owed \$2,350.00 in rent that was due on May 01, 2013.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$740.00 by the first day of each month and that the Tenant owes \$2,350.00 in rent for the period ending May 31, 2013. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$2,350.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy was mailed to the Tenant on May 03, 2013, which directed the Tenant to vacate the rental unit by May 13, 2013, pursuant to section 46 of the *Act*.

Section 90 of the *Act* stipulates that a document that is mailed is deemed to be received on the fifth day after it is mailed. I therefore find that the Tenant received the Notice to End Tenancy on May 08, 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 May 08, 2013, I find that the earliest effective date of the Notice is May 18, 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 May 18, 2013.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted that 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.

The Landlord has established a monetary claim, in the amount of \$2,400.00, which is comprised of \$2,350.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the security deposit of \$370.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,030.00. 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: June 12, 2013

Residential Tenancy Branch

