



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 scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord requested 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 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on June 17, 2013 the 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 supplied a copy of the Canada Post receipt and tracking number. The mail was not returned to the landlord.

These documents are deemed to have been served on the 5th day after mailing, in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

After questioning the landlord in relation to the content of the 10 day notice to end tenancy for unpaid rent that had been given to the tenant, a copy of that Notice and the tenancy agreement was requested. The landlord indicated he could supply those documents before the end of the business day, which he did. This relevant evidence was requested, as permitted by the Residential Tenancy Branch rules of procedure. The documents were supplied, as requested.

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 security deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on October 15, 2012. Rent is \$850.00 per month, due on the 1st day of each month. A security deposit in the sum of \$475.00 was paid.

The landlord provided affirmed testimony that on June 9, 2013 he personally served a 10 day Notice to end tenancy for unpaid rent to the tenant, at the rental unit address. The tenant signed a copy of the landlord's Notice, acknowledging receipt. The Notice had an effective date of June 19, 2013.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$950.00 for June 2013 rent 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 is 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 has not paid June or July 2013 rent and has told the landlord she will not vacate the unit. The landlord has requested compensation in the sum of \$1,900.00 for unpaid June and July 2013 rent.

The landlord rents the tenant a basement suite; the tenant of upper suite has told the landlord that she continues to see the tenant coming and going from the unit.

Analysis

Section 90 of the Act stipulates that a document that is personally delivered is deemed served on the day of delivery. Therefore I find that the tenant received the Notice to End Tenancy on June 9, 2013. The tenant has signed the Notice, acknowledging receipt of the Notice.

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 June 9, 2013, I find that the earliest effective date of the Notice is June 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 June 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 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 \$1,900.00 for June and July 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 \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$475.00, in partial satisfaction of the monetary claim.

The landlord has been granted an Order of Possession that is effective 2 days after service to 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 for the balance of \$1,475.00. 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.

The landlord is entitled to a monetary Order for unpaid rent.

The landlord is entitled to filing fee costs.

The landlord is entitled to retain the security deposit.

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: July 18, 2013

Residential Tenancy Branch