



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR

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 and a monetary Order for unpaid rent.

The male Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to the Tenant at the rental unit on October 22, 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.

At the hearing the Landlord applied to amend the Application for Dispute Resolution to include unpaid rent from November of 2013. As it would be reasonable for the Tenant to believe that the Landlord would be seeking all of the rent currently due, I granted the application to amend the amount of the claim for unpaid rent.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent?

Background and Evidence:

The male Landlord stated that this tenancy began on June 20, 2013; that the Tenant agreed to pay monthly rent of \$1,300.00 by the first day of each month; and that the Tenant did not pay any rent for October or November of 2013.

The male Landlord stated that he posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of October 13, 2013, on the door of the rental unit on October 03, 2013. The Notice declared that the Tenant owed \$1,300.00 in rent that was due on October 01, 2013. A copy of the Notice was submitted in evidence.

Analysis

On the basis of undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,300.00 on the first day of each month and that the Tenant did not pay rent for October of 2013. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,300.00 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, served pursuant to section 46 of the *Act*, was posted on the door of the rental unit on October 03, 2013.

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 October 06, 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 October 06, 2013, I find that the earliest effective date of the Notice was October 16, 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 October 16, 2013.

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

As the Tenant did not vacate the rental unit on October 16, 2013, I find that she is obligated to pay rent, on a per diem basis, for the days she remained in possession of the rental unit. As she has already been ordered to pay rent for the period between October 16, 2013 and October 31, 2013, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the 28 days in November that she remained in possession of the rental unit, at a daily rate of \$43.33, which equates to \$1,213.24. I am unable to grant the Landlord a full month's rent for November, as it is possible the Tenant will vacate the rental unit today.

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 \$2,513.24 in unpaid rent and I grant the Landlord a monetary Order for that amount. In the event 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: November 28, 2013

Residential Tenancy Branch

