



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prideaux Holdings Inc.
and [tenant name suppressed to protect privacy]

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 has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain the security deposit, 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 October 2, 2013 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. A Canada Post tracking number was provided as evidence of service.

During the hearing the landlord checked the Canada Post web site and established that the tenant had signed, accepting the registered mail, on October 8, 2013.

Therefore, these documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

The application was amended to include a claim of unpaid rent to November 2013 inclusive.

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 April 5, 2013; rent was \$850.00 per month, due on the 1st day of each month. A security deposit in the sum of \$425.00 was paid. The signed tenancy agreement supplied as evidence indicated that a \$100.00 pet deposit was not applicable

The landlord stated that on September 11, 2013 at 11:30 a.m. she posted a 10 day Notice to end tenancy for unpaid rent to the tenant's door. Two other occupants of the building were present and saw her post the Notice, which had an effective date of September 23, 2013.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,750.00 within 5 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.

In July 2013 the tenant paid all but \$50.00 of rent owed; no rent has been paid since that time. The tenant will not respond to the landlord's telephone calls or emails; the landlord said people continue to come and go from the unit.

The landlord stated that the total amount owed for rent to November 2013 is \$3,450.00; (\$850.00 for August to November 2013 each, plus \$50.00 from July 2013.)

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 September 15, 2013.

Section 46(1) of the Act stipulates that a 10 day Notice to end tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on September 15, 2013, I find that the earliest effective date of the Notice is September 25, 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 September 25, 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 September 25, 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 effective September 25, 2013. On this basis I will grant the landlord an Order of Possession.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$3,450.00 from July to November 2013 inclusive and, pursuant to section 67 of the Act, 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 \$425.00, 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 \$3,075.00. 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 may retain the security deposit.

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: November 08, 2013