



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR

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 and a monetary Order for unpaid rent.

The landlord provided affirmed testimony that on October 15, 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. The mail was returned to the landlord, marked as unclaimed.

Refusal or failure to retrieve registered mail does not allow a party to avoid service. Therefore, I find that 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

The landlord has submitted an amended application including a request for unpaid November 2013 rent in the sum of \$700.00. The amended application was sent to the tenant via courier on November 18, 2013. The landlord did not have any evidence that the tenant accepted that couriered package. However, as rent is the most basic term of a tenancy I determined that the application would be amended to include a claim for unpaid November 2013 rent.

The landlord indicated she wished to retain the deposit against the rent owed.

The landlord confirmed that she paid a filing fee and wishes to claim recovery of that \$50.00 fee from the tenant.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to a monetary Order for unpaid October and November 2013 rent in the sum of \$1,400.00?

Background and Evidence

On May 24, 2013, the date the \$350.00 security deposit was paid, the parties signed a tenancy agreement. The tenant was given the only signed copy of the agreement. Rent was \$700.00 per month, due on the 1st day of each month.

The landlord provided a copy of a proof of service document signed by her agent and a witness, C.V., declaring that on October 2, 2013 a 10 day Notice to end tenancy for unpaid rent was posted to the tenant's door. The Notice was posted at 12:30 p.m. with C.V., another tenant of the building, present as a witness.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$700.00 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, October 15, 2013, unless the tenant filed an Application for Dispute Resolution within 5 days.

The landlord said the tenant remains living in the unit and has not paid any rent since September 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 October 5, 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 October 5, 2013, I find that the earliest effective date of the Notice is October 15, 2013; the date indicated on the Notice.

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 October 15, 2013, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 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 October 15, 2013. 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 \$1,400.00 for October and November, 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.

Section 72(2) of the Act provides an arbitrator with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant. Therefore, I find that the landlord may retain the tenant's security deposit in the amount of \$350.00, in partial satisfaction of the monetary claim.

The landlord has been granted an Order of possession that is effective 2 days after it is served 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.

I find that the landlord has established a monetary claim, in the amount of \$1,450.00, which is comprised of \$1,400.00 in unpaid October, and November 2013 rent and \$50.00 in compensation for the filing fee paid by the landlord for this application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,100.00. 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 may retain the security deposit in partial satisfaction of the claim.

Dated: November 25, 2013

Residential Tenancy Branch

