



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0947713 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, 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 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 November 29, 2013 he personally served the tenant copies of the Application for Dispute Resolution and Notice of Hearing. Service occurred in the evening, at the tenant's door. The building manager, P.S. was present. The tenant took the documents and a brief explanation was given to him.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

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 deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy was in effective 1.5 years ago when the landlord purchased the rental unit. No tenancy documents were provided to the landlord by the seller. The rent is \$550.00 due on the 1st day of each month. A security deposit in the sum of \$225.00 was paid.

The landlord provided affirmed testimony that on November 9, 2013 at 2 p.m. a 10 day Notice to end tenancy for unpaid rent, which had an effective date of November 19, 2013, was personally served to the tenant. The male landlord and the building manager served the Notice to the tenant at his rental unit.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,100.00 for October and November, 2013 rent 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.

The tenant had not paid any rent since September 2013; the landlord had claimed compensation in the sum of \$2,200.00 for rent owed from October 2013 to January 2014, inclusive. The tenant remains in the rental unit.

Analysis

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 the day of personal delivery, November 9, 2013, I find that the earliest effective date of the Notice was November 19, 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 November 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 effective November 19, 2013.

On this basis I will grant the landlord an Order of possession that is effective two days after the order 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.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$2,200.00 from October 2013 to January 2014, inclusive, and that the landlord is entitled to compensation in that amount.

I find that the landlord is entitled to retain the \$225.00 security deposit in partial satisfaction of the claim.

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.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,025.00. 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 for unpaid rent.

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: January 20, 2014

Residential Tenancy Branch

