



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pleqja Brother Ent. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: **CNR, OPR, MNR, FF**

Introduction

This was a cross-application hearing.

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 and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied to cancel a 10 day Notice to end tenancy for unpaid rent.

The agent for the landlord provided affirmed testimony that on February 18, 2014 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 and receipt was provided as evidence of service.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act; effective February 23, 2014, however the tenant did not appear at the hearing.

The landlord confirmed receipt of the tenant's Notice of hearing.

Preliminary Matters

The landlord's application was amended to remove the male respondent named. The male respondent did not sign the tenancy agreement and is an occupant of the unit, not a tenant.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent or should the 10 day Notice to end tenancy for unpaid rent be cancelled?

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on December 1, 2013, rent is \$625.00 due on the 1st day of each month. A security deposit in the sum of \$312.50 was paid. A tenancy agreement was signed; a copy was not submitted as evidence.

The landlord stated that on January 9, 2014 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of January 19, 2014, was served by posting to the tenant's door at 9 a.m. The landlord's spouse was present as a witness.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$625.00 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 5 days.

The landlord has claimed compensation for unpaid January and February 2014 rent in the sum of \$1,250.00. The tenant continues to reside in the unit and has not paid rent.

The landlord would like to retain the security deposit in partial satisfaction of the claim.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3rd day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on January 12, 2014.

Section 46(1) of the Act stipulates that a 10 day Notice ending 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 January 12, 2014, I find that the earliest effective date of the Notice is January 22, 2014.

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 January 22, 2014.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on January 22, 2014, 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 ending 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 the effective date of the Notice; January 22, 2014.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,250.00 for January and February 2014 and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and, pursuant to section 72 of the Act 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 a dispute resolution officer 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 \$312.50, 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 \$987.50. 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.

The tenant failed to attend the hearing, in support of her application to cancel the Notice. Therefore, I find, pursuant to Residential Tenancy Branch Rules of Procedure, section 10.1, that the tenant's application is dismissed.

Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

The tenant's application is dismissed.

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: February 27, 2014

Residential Tenancy Branch

