



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMMEUBLES NATALIE INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR

Introduction

This matter was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing, as I had insufficient evidence to conclude that the Tenant entered into a tenancy agreement with the Landlord.

The participatory hearing was convened to consider 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 Agent for the Landlord #1 stated that on January 26, 2015 my interim decision of January 19, 2015 and the Notice of Hearing were sent to the Tenant at the rental unit, via registered mail. The Agent for the Landlord #2 cited a tracking number 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 Act; however the Tenant did not appear at the hearing.

In my interim decision I determined that the direct request proceeding documents had been served to the Tenant by registered mail on January 13, 2015.

Issue(s) to be Decided

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

Background and Evidence

The Agent for the Landlord #1 stated that this tenancy began on July 01, 2014 and that the Tenant agreed to pay monthly rent of \$850.00 by the first day of each month. He stated that the Tenant was present when the written tenancy agreement was prepared; that she agreed to the terms of the agreement; but they neglected to have her sign the agreement.

The Agent for the Landlord #1 stated that the Tenant had not paid her rent for January by January 01, 2015. He stated that the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent by registered mail on January 02, 2015. A copy of a Canada Post receipt was submitted that corroborates this testimony.

The Notice to End Tenancy declared that the Tenant must vacate the rental unit by January 12, 2015. The Notice declared that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The Agent for the Landlord #1 stated that the Tenant paid her January rent on January 17, 2015 and that she was issued a receipt for "use and occupancy only". The Agent for the Landlord #1 stated that the Tenant paid her February rent on January 26, 2015 and that she was issued a receipt for "use and occupancy only".

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a verbal agreement with the Landlord, in which she agreed to pay rent of \$850.00 by the first day of each month.

Section 26(1) of the *Residential Tenancy Act (Act)* requires tenants to pay rent to their landlord. If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days if appropriate notice is given to the tenant. As the Tenant did not pay her rent on January 01, 2015, I find that the Landlord had the right to serve the Tenant with a Ten Day Notice to End Tenancy, pursuant to section 26 of the *Act*.

On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy was mailed to the Tenant on January 02, 2015. Section 90 of the *Act* stipulates that a document that is served by mail is deemed to be received on the fifth day after it is mailed. I therefore find that the Tenant is deemed to have received the Notice to End Tenancy on January 07, 2015.

Section 46(1) of the *Act* stipulates that a Ten 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 January 07, 2015, I find that the earliest effective date of the Notice was January 17, 2015.

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 17, 2015. .

Section 46(4) of the *Act* stipulates that a tenant has five 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 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. I therefore find that the Landlord is entitled to an Order of Possession.

As the evidence shows the rent is currently paid in full, I dismiss the application for a monetary Order.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on February 28, 2015. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia 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: February 18, 2015

Residential Tenancy Branch

