



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 tenants for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on March 19, 2015 at approximately 11:30 a.m. he personally served copies of the Application for Dispute Resolution and Notice of Hearing to each tenant. Service took place at the rental unit address.

These documents are deemed to have been served on the day of personal delivery, in accordance with section 89 and 90 of the Act; however neither tenant appeared 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 security deposit paid by the tenants?

Background and Evidence

The tenancy commenced on September 1, 2014, a tenancy agreement was signed and the tenants have the only copy. Rent is \$1,800.00 per month, due on the first day of each month. A security deposit in the sum of \$500.00 was paid; the tenants were to pay an additional \$400.00 but had not done so.

The landlord stated that on March 3, 2015 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of March 13, 2015, was personally served to the tenants. Service occurred in the morning, at the rental unit, to the male tenant.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$4,400.00 within 5 days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants 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 landlord applied requesting compensation in the sum of \$800.00 for January 2015 rent plus rent owed for each of February, March and April 2015 totalling \$6,200.00.

Since the Notice was served the tenants have made 3 payments totalling \$2,100.00 (\$800.00 + \$900.00 + \$400.00.) Receipts for use and occupancy have not been issued. The landlord did discuss the hearing with the tenant two days ago; the tenants have been trying to make the payments needed.

The landlord said they are owed a balance of \$4,100.00 to April 2015, inclusive.

Analysis

Section 90 of the Act stipulates that a document given personally is deemed served on the day of personal delivery. Therefore, I find that the tenants received the Notice to end tenancy on March 3, 2015.

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 tenants are deemed to have received this Notice on March 3, 2015, I find that the earliest effective date of the Notice is March 13, 2015.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on March 13, 2014, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five 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 tenants exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended on the effective date of the Notice; March 13, 2015.

In the absence of evidence to the contrary, I find that the tenants has not paid rent in the amount of \$4,100.00 owed between February and April 2015 and that the landlord is

entitled to compensation in that amount for unpaid rent and rent revenue beyond March 13, 2015.

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 \$100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$500.00 security deposit in partial satisfaction of the claim.

The landlord has been granted an Order of possession that is effective two days after service to the tenants. This Order may be served on the tenants, 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 \$3,700.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, 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 and monetary Order for unpaid rent to April 2015 inclusive.

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: April 23, 2015

Residential Tenancy Branch

