



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR, MNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67.

This application was originally heard by way of a Direct Request Proceeding and on March 9, 2016 an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:45 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on March 21, 2016, she sent a copy of the Application for Dispute Resolution including the Notice of Hearing and Interim Decision to the tenant by registered mail. The landlord provided a registered mail tracking number in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution, Notice of Dispute Resolution Hearing and Interim Decision on March 26, 2016, the fifth day after it was mailed, pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Issues

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67?

Background and Evidence

A tenancy agreement was signed on February 5, 2016 with a stipulated start date of February 15, 2016 and a monthly rent of \$1150.00 payable on the 1st day of each month. The agreement also required payment of a \$575.00 security deposit by February 5, 2016.

At the request of the tenant, the tenancy began two days early on February 13, 2016. The tenant provided a cheque for \$79.30 on this date to cover pro-rated rent for these two days. The tenant also provided two separate cheques on February 15, 2016 each in the amount of \$575.00 to cover rent for February 15-29 and payment of the security deposit. All three of the cheques were returned due to insufficient funds.

The landlord testified that on February 22, 2016 she personally served the tenant with the 10 day Notice to End Tenancy for unpaid rent. A witnessed proof of service of this Notice was provided with the application.

On February 26, 2016, the tenant sent two separate e-transfers to the landlord. The landlord testified that the first e-transfer was in the amount of \$79.30 to cover the pro-rated rent for February 13 and 14th and the second e-transfer was to cover the payment of the security deposit. On March 18, 2016, the landlord sent the tenant a demand letter indicating that rent for February 15-29th and for March 1st was still outstanding as she had only received payment of the two days rent for February 13th and 14th plus \$575.00 for the security deposit.

The landlord testified that no payments of rent have been made since the date of the application and rent for April 1st was also not paid. During the hearing, the landlord stated that she was only pursuing the application for an order of possession and withdrew and claims for a monetary award.

Analysis

I am satisfied that the tenant was personally served with the 10 day Notice to End Tenancy on February 22, 2016 pursuant to section 88 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, March 3, 2016.

I accept the landlord's uncontested evidence and find that the tenant was obligated to pay monthly rent in the amount of \$1150.00 but failed to pay rent for the period of February 15-29, March 1st and April 1st of 2016.

Therefore, I find that the landlord is entitled to an Order of Possession.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: April 21, 2016

Residential Tenancy Branch