



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was scheduled in response to the landlords' 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 agent for the landlord provided affirmed testimony that on August 19, 2016 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail to the address noted on the application. A Canada Post tracking number and receipt was provided as evidence of service to the rental unit address.

The landlord checked the Canada Post tracking information and established a delivery date of August 30, 2016 when the tenant signed accepting the mail.

Therefore I find that the hearing documents and evidence supplied with the application were served to the tenant on August 30, 2016.

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?

Background and Evidence

The tenancy commenced on September 1, 2012. Rent is due on the first day of each month. Current rent is \$957.00 per month. The landlord is holding a security deposit in the sum of \$470.00. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on August 9, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of August 18, 2016, was served by posting

to the rental unit door. The landlord posted the Notice at 8:20 p.m. The Notice was issued on August 8, 2016.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$956.00 within five 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 paid August rent, in full, on August 23, 2016. A receipt for use and occupancy was issued.

The tenants' rent payment for September 2016 was returned as non-negotiable; that rent has not been paid.

October rent was paid in full; a receipt for use and occupancy was issued.

The landlord has claimed compensation in the sum of \$957.00 for August, September and October 2016 rent totalling \$2,818.00.

The tenant did not appear at the hearing to oppose the claim and remains occupying the rental unit.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on August 12, 2016.

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 August 12, 2016, I find that the earliest effective date of the Notice is August 22, 2016.

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 August 22, 2016.

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 August 22, 2016, 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. The tenant did not dispute the Notice. The tenant received the Notice effective August 12, 2016 and had until August 17, 2016 to pay the rent in full. The tenant paid the overdue August 2016 rent on August 23, 2016. Therefore, pursuant to section 46(5) of the Act, I find that the tenant is conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice; August 22, 2016 as rent was not paid by August 17, 2016.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$957.00 for September 2016 and that the landlord is entitled to compensation in that amount. The balance of the claim for rent is dismissed as it has been paid. Even though August and October 2016 rent was paid the landlord gave the tenant notice, by issuing receipts for use and occupancy confirming that the tenancy had ended.

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord has been granted an order of possession that is effective two 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 in the sum of \$1,057.00. 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 and monetary order for unpaid September 2016 rent.

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: October 14, 2016

