



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Salish Court
and [tenant name suppressed to protect privacy]

FINAL DECISION

Dispute Codes:

OPR, MNR

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution made via the Direct Request Proceeding process. On January 19, 2017 an interim decision was issued, adjourning the application to this participatory hearing.

The landlord has requested an order of possession for unpaid rent and a monetary order for unpaid rent.

On January 25, 2017 the landlord served the tenant with the notice of hearing and hearing documents, via registered mail. The landlord provided the registered mail tracking number as evidence of service. The landlord said that the tenant continues to occupy the rental unit.

Therefore, I find that these documents are deemed to have been served in accordance with section 89 and 90 of the Act; effective January 30, 2017.

The tenant did not appear 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?

Background and Evidence

The tenancy commenced on April 8, 2016. Rent is \$730.00 due on the first day of each month. The landlord is holding a security deposit in the sum of \$365.00. A copy of the tenancy agreement was supplied as evidence.

The landlord states that on January 2, 2017 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of January 12, 2017, was served by posting

to the tenants' door. A proof of service document signed by the owner and agent was submitted as confirmation of service at 2:00 p.m.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$730.00 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.

On January 18, 2017 the tenant paid January 2017 rent in full. The landlord issued a receipt for use and occupancy only. The tenant has yet to pay February 2017 rent.

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 January 5, 2017.

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 5, 2017, I find that the earliest effective date of the Notice is January 15, 2017.

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 15, 2017.

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 15, 2017, 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 received the Notice on January 5, 2017 and was required to pay the rent by January 10, 2017. The tenant paid the rent on January 18, 2017. The landlord issued a receipt informing the tenant that payment was accepted for occupation only.

Therefore, as the tenant did not pay the rent within five days of receipt of the Notice and did not dispute the Notice I find, pursuant to section 46(5) of the Act, that the tenant accepted that the tenancy has ended on the effective date of the Notice January 15, 2017.

As the landlords' claim has merit and the landlord has paid the filing fee I find pursuant to section 72 of the Act that the landlord may deduct the \$100.00 filing fee from the security deposit. The landlord is now holding a deposit in the sum of \$265.00.

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.

Conclusion

The landlord is entitled to an Order of possession.

The tenant has paid the rent claimed by the landlord.

The landlord may deduct the \$100.00 filing fee from the security deposit.

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 06, 2017

Residential Tenancy Branch