



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for 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 December 22, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

Preliminary Matter

The application was amended to include unpaid January 2011, rent, as the tenancy agreement submitted as evidence clearly indicates this amount was owed monthly.

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?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy agreement submitted as evidence requires the tenant to pay monthly rent of \$1,150.00 on or before the first day of each month. The tenant paid a security deposit of \$575.00 on November 7, 2009.

The landlord stated that on December 7, 2010, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 17, 2010, was served by registered mail sent to the rental unit address. A copy of the Canada Post receipt and tracking number was provided as evidence of service.



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The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,765.00 within five days after the tenant is assumed to have received the Notice. The Notice also indicated that the tenant is presumed to have accepted that the tenancy is 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 last paid \$3,000.00 on November 17, 2010; leaving arrears in the sum of \$615.00 for November, 2010. The tenant did not pay December 2010, rent or January, 2011, rent owed resulting in arrears of \$2,915.00. A copy of a tenant ledger was supplied as evidence of rent owed and payments made.

Analysis

Section 90 of the Act stipulates that a document that is served by registered mail is deemed to be received on the fifth day after it is mailed. I therefore find that the tenant received the Notice to End Tenancy on December 12, 2010.

Section 46(1) of the Act stipulates that a 10 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 December 12, 2010, I find that the earliest effective date of the Notice is December 22, 2010.

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 December 22, 2010.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on December 22, 2010, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) 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. In the circumstances before me I have no evidence that the tenant exercised either of these rights' therefore; pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$2,915.00 for November, December 2010, and January, 2011, and that the landlord is entitled to compensation in that amount.

Section 72(2) of the Act provides a dispute resolution officer with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant.



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Therefore, I find that the landlord may retain the tenant's security deposit in the amount of \$575.00, in partial satisfaction of the monetary claim. No interest has accrued.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 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.

I find that the landlord has established a monetary claim, in the amount of \$2,965.00, which is comprised of unpaid November, December, 2010, rent, plus unpaid January, 2011, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$575.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$2,390.00**. 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.

Dated: January 13, 2011.

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