



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes:

OPR, MNR, MNSD

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 and to retain the security deposit.

The agent for the landlord provided affirmed testimony that on February 25, 2013 each tenant was served copies of the Application for Dispute Resolution and Notice of Hearing, sent to each tenant via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service to each tenant.

On March 4, 2013 the landlord served each tenant copies of an amended application. Copies of the Canada Post receipts and tracking numbers were provide as evidence of service to the rental unit address.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenants 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?

May the landlord retain the deposit paid by the tenants?

Background and Evidence

One tenant moved into the unit on October 1, 2012; the 2nd tenant moved into the unit on January 7, 2013. Each tenant signed the tenancy agreement that was supplied as evidence. Rent is \$850.00 per month, due on the 1st day of each month. A \$400.00 deposit was paid.

The landlord stated that on February 3, 2013 a 10 Day Notice to End Tenancy for Unpaid Rent was hand delivered to tenant R.J. Service occurred at the rental unit address, at 1 p.m. with a witness present. The landlord supplied a proof of service document, signed by the witness, confirming service. The landlord also served the tenants with a copy of the Notice, sent via registered mail to the rental unit address. A copy of a registered mail receipt and tracking number was supplied as evidence.

The Notice had an effective date of February 17, 2013 and indicated that the Notice would be automatically cancelled if the landlord received \$75.00 within five 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 tenants filed an Application for Dispute Resolution within five days.

Effective February 1, 2013 the tenants owed the landlord \$75.00 rent. After the Notice was given to the tenants no further rent payments were made. The landlord is claiming compensation in the sum of \$75.00 for February 2013 and \$850.00 for unpaid March 2013 rent.

Analysis

In the absence of evidence to the contrary, I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on February 17, 2013, pursuant to section 46 of the Act. I find that the tenants were served the Notice effective February 3, 2013; the date the landlord personally gave a copy to the tenant.

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 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 this basis I will grant the landlord an Order of Possession that is effective two days after the order is served to the tenants.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$925.00 for February and March 2013, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and, as the landlord has paid the filing fee cost, that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the \$400.00 security deposit in partial satisfaction of the claim.

Based on these determinations I grant the landlord a monetary Order for \$575.00. 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

The landlord has been granted an Order of possession that is effective **two days after it is served upon 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.

Conclusion

The landlord is entitled to a monetary Order for unpaid rent.

The landlord is entitled to an Order of possession.

The landlord is entitled to 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: March 20, 2013

Residential Tenancy Branch

