



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 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 fees 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 October 27, 2016 copies of the Application for Dispute Resolution and Notice of Hearing and evidence 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. The mail was returned marked as unclaimed by Canada Post.

A failure to claim registered mail does not allow a party to avoid service. Therefore, I find these documents are deemed to have been served on the 5th day after mailing, in accordance with section 89 and 90 of the Act.

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 1, 2016. Rent is \$1,330.00 due on or before the first day of each month. The landlord is holding a security deposit in the sum of \$665.00. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on October 6, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of October 19, 2016, was served by posting to the tenants' door. Service occurred in the early afternoon.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,330.00 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 landlord supplied a copy of a receipts issued for use and occupancy on October 27, 2016 and November 2016 rent paid. The tenant paid the rent and fees due for October.

The tenant has not paid December 2016 rent in the sum of \$1,330.00; the landlord has asked that the claim for unpaid October 2016 rent be applied to December rent owed.

The landlord would like any compensation deducted from the security deposit.

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 October 9, 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 October 9, 2016, I find that the earliest effective date of the Notice is October 19, 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 October 19, 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 within five days of receipt of the Notice 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 the effective date of the Notice.

The tenant paid the rent but did not do so within five days of October 9, 2016. The landlord issued a receipt for use and occupancy for October and November 2016 rent payments, indicating the tenancy had not been reinstated.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure provides:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

Therefore, I find that the application is amended to reflect a claim for unpaid rent in the sum of \$1,300.00 for December 2016 rent. The tenant has been put on notice of a claim in that sum and would reasonably anticipate that rent, as the most basic term of a tenancy, must be paid.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,330.00 for December 2016, and that the landlord is entitled to compensation in that amount.

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.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$665.00 security deposit in partial satisfaction of the claim.

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 for the balance of \$765.00. 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.

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

The landlord may 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: December 14, 2016

Residential Tenancy Branch