



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This reconvened hearing was scheduled pursuant to a Direct Request decision issued December 4, 2009 with respect to the landlord's request for an Order of Possession and Monetary Order for unpaid rent. The landlord testified that she received the December 4, 2009 decision and Notice of Hearing from the Residential Tenancy Branch on December 14, 2009 and posted the Notice of Hearing on the tenant's door on December 16, 2009. The tenant(s) did not appear at the hearing; however, I was satisfied that the landlord had sufficiently served the Notice of Hearing upon the tenant in accordance with section 89(2) of the Act and I proceeded to hear from the landlord with respect to the landlord's request for an Order of Possession.

As section 89(1) of the Act requires the landlord to serve a tenant with hearing documents that relate to a monetary claim via personal delivery or registered mail, I dismissed the landlord's monetary claim for unpaid rent with leave to reapply.

Issues(s) to be Decided

1. Identity of tenant(s).
2. Is the landlord entitled to an Order of Possession?
3. Award of filing fee.

Background and Evidence

Upon consideration of the undisputed evidence before me, I make the following findings. The landlord and one of the tenants identified in this application (herein referred to as RM or the tenant) signed a tenancy agreement on May 7, 2009. The tenant is required to pay rent of \$1,350.00 on the 1st day of every month. The tenant paid a security deposit of \$675.00 on May 7, 2009. The tenant failed to pay rent of \$100.00 for the month of October 2009 and failed to pay the rent when due for November 2009. The landlord personally served the tenant with a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) on November 3, 2009. The tenant signed a Proof of Service document confirming receipt of the Notice. The Notice identifies the two tenants named in this application and indicates rent of \$1,450.00 was unpaid as of November 1, 2009 and has an effective date of November 13, 2009. The tenant subsequently paid \$800.00 of the outstanding rent on November 21, 2009. The tenant did not dispute the Notice and has not vacated the rental unit.

Analysis

Upon review of the tenancy agreement and the landlord's testimony, I find that the landlord has established that there is a tenancy agreement with RM. I do not have sufficient evidence that the other person identified in this application had a tenancy agreement with the landlord. Accordingly, the Order of Possession that has been provided with this decision names RM as the tenant and any other resident in the rental unit is considered an occupant.

Where a tenant is served with a Notice for unpaid rent, the tenant has five days to either pay the outstanding rent or dispute the Notice; otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date. Based on the evidence before me, I am satisfied that the landlord served the tenant with the Notice and that the tenant did not pay the outstanding rent in full or dispute the Notice within five days.

I find the effective date on the Notice complies with the requirements of the Act and I do not find that identifying an occupant on the Notice, in addition to naming the tenant, invalidates the Notice. Therefore, I find the tenancy ended on November 13, 2009 and since the tenant continues to reside in rental unit, the landlord is entitled to an Order of Possession. I provide an Order of Possession for the landlord with this decision effective two days after service upon the tenant. The landlord may file the Order of Possession with the Supreme Court of British Columbia to enforce as an Order of that court.

I grant the landlord's request to recover the filing fee paid for this application. The landlord is hereby authorized to deduct \$50.00 from the tenant's security deposit in satisfaction of this award.

Conclusion

The tenancy has ended and the landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord is authorized to recover the filing fee of \$50.00 by deducting this amount from the security deposit. The landlord's claims for unpaid rent have been dismissed with leave to reapply.

This decision 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: January 14, 2010.

Dispute Resolution Officer