



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, & FF

Introduction

This hearing dealt with an application for Dispute Resolution by the landlord seeking an Order of Possession and a monetary Order due to the tenant's failure to pay rent. The landlord also seeks to retain the tenant's security deposit in partial satisfaction of this claim.

The landlord stated that the tenant was served with notice of this application and hearing by registered mail on September 27, 2010. The landlord stated that the registered package was unclaimed by the tenant.

Based on the oral evidence provided by the landlord, I am satisfied that the tenant was served with notice of this proceeding by registered mail and I deem that the tenant received notice on the fifth day after the registered mail was sent pursuant to section 90(a) of the *Act*.

I proceeded with the hearing in the tenant's absence.

Issues(s) to be Decided

Has the tenant breached the tenancy agreement, *Act* or regulations entitling the landlord to an Order of Possession and monetary relief?

Background and Evidence

The landlord provided a copy of the tenancy agreement signed by the parties on May 20, 2009 commencing a tenancy on June 1, 2009 for the monthly rent of \$1,650.00 due the 1st of each month and a security deposit of \$825.00 paid on May 19, 2009.

The landlord testified that the tenant was served with a 10 day Notice to End Tenancy Due to Unpaid Rent when it was personally given to the tenant on September 14, 2010.

The landlord requested that the tenant sign a Proof of Service document acknowledging receipt of the notice; however the tenant declined.

The landlord provided a copy of the 10 day Notice to End Tenancy due to Unpaid Rent which was signed by the landlord on September 14, 2010 and declares that the tenant failed to pay the rent owed of \$1,735.00 on September 1, 2010. The notice declares that the tenant must vacate the rental unit by September 24, 2010 unless the tenant pays the outstanding rent owed or has filed an application for Dispute Resolution to dispute the notice within five days of receiving the notice.

The landlord testified that the tenant has failed to pay the rent owed for September and October 2010 for the total of \$3,300.00. The landlord also seeks two late payments of rent fees for the sum of \$50.00, one service charge fee of \$25.00 and the recovery of the \$50.00 filing fee paid for this application. The total claimed by the landlord is \$3,425.00. The landlord seeks to retain the tenant's security deposit in partial satisfaction of these claims.

Analysis

Based on the evidence provided by the landlord and in the absence of evidence to the contrary, I find that the tenant has failed to pay the rent owed of \$3,300.00 for September and October 2010 as required by the tenancy agreement. I find that the tenant was served with a 10 day Notice to End Tenancy due to Unpaid rent and that the tenant failed to either pay the outstanding rent or to file an application for Dispute Resolution to dispute the notice in the five days provided by section 46(4) of the *Act*.

Pursuant to section 46(5) of the *Act*, I find that the tenant has conclusively accepted the end of the tenancy agreement effective September 24, 2010 and on this basis I grant the landlord's application seeking an Order of Possession for the rental unit.

I am satisfied by the documentary evidence provided by the landlord that the tenant failed to pay rent owed for the sum of \$3,300.00 for the months of September and October 2010. I also find that the tenant owes three late payments of rent fees totally \$75.00 as required by the tenancy agreement. In addition I Order that the tenant to recovery the \$50.00 filing fee paid by the landlord for this application. As a result, I find that the landlord has established a total monetary claim for the sum of \$3,425.00. From this sum I order that the landlord may retain the tenant's security deposit of \$825.00 in partial satisfaction of this claim.

I grant the landlord a monetary Order for the remaining sum of **\$2,600.00** pursuant to section 67 of the *Act*.

Conclusion

I find that the landlord is entitled to an Order of Possession of the rental unit effective **two (2) days** after it has been served upon the tenant. This Order may be 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 due to breach of the tenancy agreement by the tenant for the sum of **\$2,600.00**. This Order must be served on the tenant. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: October 29, 2010.

Dispute Resolution Officer