



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR

Introduction

This participatory hearing was scheduled for 11:00 a.m. on this date pursuant to a decision issued September 20, 2010 under the Direct Request procedure. The tenant did not appear at the participatory hearing. The landlord testified that he personally served the Notices of Hearing upon the tenant and the occupant at the rental unit within three days of receiving the Direct Request decision. I was satisfied the tenant was notified of this hearing and I proceeded to hear from the landlord without the tenant present.

On a procedural note, the landlord had identified two tenants in making this Application for Dispute Resolution; however, only one tenant had signed the tenancy agreement. Therefore, I amended the Application for Dispute Resolution to name only the tenant that signed the tenancy agreement.

The landlord requested his application be amended to include retention of the security deposit in satisfaction of the rent owed the landlord. As I found this did not prejudice the tenant I accepted this amendment.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord authorized to retain the security deposit?

Background and Evidence

The landlord provided the following evidence. The tenancy commenced on June 1, 2010 and the tenant is required to pay rent of \$800.00 on the first day of every month. The tenant paid a \$400.00 security deposit. The tenant failed to pay rent for September 2010 and on September 2, 2010 the landlord personally served a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) upon the adult son of the tenant who resides with the tenant in the rental unit. The 10 Day Notice indicates that \$800.00 was outstanding as of September 1, 2010 and has an effective date of September 12, 2010. The tenant did not pay the outstanding rent or dispute the Notice. The tenant and the occupant continued to occupy the rental unit and did not pay for use and occupancy for October 2010.

Provided as evidence were copies of the tenancy agreement, 10 Day Notice, and Proof of Service of the 10 Day Notice.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with a 10 Day Notice to End Tenancy as declared by the landlord and that service of the Notice complies with the requirements of the Act.

I accept the evidence before me that the tenant has failed to pay the rent owed in full or dispute the Notice within 5 days of receiving the Notice as permitted under section 46(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Therefore, I find that the tenancy ended September 12, 2010 and the landlord is entitled to an Order of Possession effective two (2) days after service upon the tenant.

The Order of Possession may be filed in The Supreme Court of British Columbia and enforced as an Order of that court.

I find the landlord established an entitlement to unpaid rent and in satisfaction of the landlord's request I authorize the landlord to retain the security deposit in satisfaction of the rent owed the landlord.

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is authorized to retain the security deposit in satisfaction of the rent owed the landlord.

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 26, 2010.

Dispute Resolution Officer