



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord seeking an Order of Possession due to the tenant's failure to pay rent. The landlord also seeks to retain the tenant's security deposit against the outstanding rent owed. The landlord did not file a monetary claim for the outstanding rent owed by the tenant.

The landlord appeared and gave affirmed oral testimony. The landlord also provided documentary evidence prior to this proceeding in accordance with the rules of procedure.

The landlord submitted a copy of the registered mail receipt confirming that the tenant was served with notice of this application and hearing by registered mail on January 4, 2011.

Based on the documentary 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*.

Issue(s) to be Decided

Did the tenant breach the tenancy agreement by failing to pay the rent owed for December 2010, entitling the landlord to an Order of Possession?

Background and Evidence

There is no written tenancy agreement but the landlord testified that she entered into an oral tenancy agreement with the tenant commencing November 1, 2010 for the monthly rent of \$600.00 and a \$300.00 security deposit.

On December 5, 2010 the landlord served the tenant a 10 day Notice to End Tenancy Due to Unpaid Rent by posting it to the door of the rental unit. The notice states that the

tenant failed to pay the rent owed of \$600.00 on December 1, 2010. The landlord stated that the tenant did pay \$150.00 of the outstanding rent but could not recall the date. The landlord provided no receipts or account ledger documenting what rent has been paid by the tenant or when the tenant made payments.

The landlord stated that the tenant has also failed to pay the rent owed for January 1, 2011. The landlord requested an Order of Possession ending this tenancy.

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 for December 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 December 18, 2010 and on this basis I grant the landlord's application seeking an Order of Possession for the rental unit.

The landlord did not file an application seeking a monetary Order for the outstanding rent owed by the tenant and therefore I find it is not appropriate to apply the tenant's security deposit against outstanding rent. In addition, the landlord failed to provide any evidence to establish what the tenant currently owes in outstanding rent.

The security deposit remains in the landlord's trust and must be dealt with in accordance with section 38(1) of the *Act* at the end of this tenancy.

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.

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 21, 2011.

Residential Tenancy Branch