



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, & FF

Introduction

This hearing dealt with an application by the landlord seeking an Order of Possession and a monetary Order due to unpaid rent by the tenant.

The landlord appeared, gave affirmed oral testimony and provided documentary evidence in advance of the proceeding in accordance with the rules of procedure. The tenant did not appear.

The landlord provided evidence that the tenant was served with notice of this application and hearing by registered mail on February 1, 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 entitling the landlord to an Order of Possession?

Background and Evidence

There is no written tenancy agreement. The landlord passed away in November 2008 and the tenant stopped paying the monthly rent. The landlord's agent testified that she was personally aware of the oral agreement between her uncle and the tenant and that the tenancy began sometime in 2007 for the monthly rent of \$1,100.00. The landlord's agent testified that she saw the tenant pay her uncle the monthly rent of \$1,100.00 at his place of business.

The landlord's agent testified that at some point the tenant vacated the rental unit and allowed other occupants to move into the residence. The landlord's agent testified that she has attempted on numerous occasions to discuss the situation with the tenant but he does not return her telephone calls.

The landlord's agent served a 10 day Notice to End Tenancy Due to Unpaid Rent by posting it to the door of the rental unit on January 11, 2011. The landlord's agent testified that several days later she received a telephone message from the tenant requesting that they work out a deal with the occupants in the rental unit.

Despite having requested a monetary claim in the amount of \$25,000.00 due to unpaid rent, the landlord's agent testified that they are only seeking an Order of Possession so that the unknown occupants in the rental unit can be removed.

Analysis

The landlord's agent has testified that she had personal knowledge of the tenant and that the tenant was renting the unit from her uncle. Based on the testimony of the landlord's agent, and in the absence of any evidence to the contrary, I accept that the landlord and the tenant had a verbal tenancy agreement.

I am also satisfied that the tenant was served with a 10 day Notice to End Tenancy Due to Unpaid Rent and I deem the tenant was served with this notice on the third day after it was posted to the door of the rental unit.

I find that 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 January 25, 2011 and on this basis I grant the landlord's application seeking an Order of Possession for the rental unit.

I deny the landlord's claim for a monetary Order for outstanding rent. Although I have accepted that there was a tenancy agreement and that the tenant failed to pay the rent owed, I find that there is insufficient evidence before me to determine what the rate of rent was. Although the landlord's agent provided testimony that the monthly rent was \$1,100.00, in the absence of some record such as a rent ledger or receipt, I am not prepared to accept that this was the monthly rent. I dismiss this portion of the landlord's claim without leave to re-apply.

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: February 18, 2011.

Residential Tenancy Branch