



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; and a Monetary Order for unpaid rent.

The landlord participated in the hearing and provided affirmed testimony. He testified that he served the Notice of a Dispute Resolution Hearing to the tenant by way of registered mail sent on June 9th, 2011. The tenant did not participate and the hearing proceeded in the tenant's absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single detached home. Pursuant to a written agreement, the month to month tenancy started in January 2002. The rent is \$1100.00 and the tenant paid a security deposit of \$500.00.

The landlord testified that the tenant has been continually later paying rent since the start of the tenancy. He stated that the tenant pays cash, and that it has been the tenant's pattern to catch up with his arrears and to fall behind. The landlord agreed that it would have been more objective to file for dispute resolution earlier, but that he always preferred to give the tenant the benefit of the doubt on his promise to pay rent. The landlord stated that the tenant has exhausted his patience and that he now wishes to end the tenancy. He said that he served the tenant a 10 Day Notice to End Tenancy in person on May 7th, 2011. The landlord stated that the tenant has not paid any rent since November 2010, and made a claim for unpaid rent totalling \$13,300.00.

Analysis

I accept the landlord's undisputed testimony that he served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution and the landlord had grounds to issue the 10 Day Notice to End Tenancy.

Concerning the unpaid rent; while I find that there is an amount of unpaid rent, the landlord provided insufficient evidence to establish the exact amount. The landlord stated that no rent was paid since November 2010 and I accept that statement to determine that the tenant owes the landlord rent for 8 months.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord established a claim of \$8800.00. I authorize the landlord to retain the tenant's \$500.00 security deposit for a balance owing of \$8300.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$8350.00.

This Order may be registered in the 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: June 28, 2011.

Residential Tenancy Branch