



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; to keep the security deposit; and to recover the filing fee associated with this application.

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 August 22nd, 2011, and provided a Canada Post tracking number; and further service was made in person on August 31st, 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 keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a condominium in a multi-unit complex. Pursuant to a written agreement, the two year, fixed term tenancy started on September 1st, 2009, ending on August 31st, 2011. The rent was \$1700.00 per month and the tenant paid a security deposit of \$850.00.

G.M., agent for the landlord, testified that upon serving the tenant with the Notice of a Dispute Resolution Hearing, the tenant had asked him to wait a little longer and that rent money was on his way. G.M. said that the tenant did not pay rent for June, July and August 2011. By the time of the hearing, the tenant had not paid any rent for September either.

In his documentary evidence, G.M. provided a copy of the 10 Day Notice to End Tenancy that he served on the tenant July 5th, 2011 by posting the notice on the tenant's door; G.M. also provided a copy of proof of service.

G.M.'s original monetary claim was for the loss of three months' rent totalling \$5100.00; at the hearing he amended his application to also claim September's rent.

Analysis

I accept G.M.'s undisputed testimony that he served the tenant with the Notice of Dispute Resolution on two occasions, both of which were 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; therefore the landlord is entitled to an Order of Possession.

I accept G.M.'s evidence concerning the tenant's failure to pay rent for three months and I find that the landlord is entitled to recover the loss of rental income as claimed, and I also accept his claim at the hearing for September rent.

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 \$6800.00. I authorize the landlord to retain the tenant's \$850.00 security deposit for a balance owing of \$5950.00. Since the landlord was successful, I award the landlord recovery of the \$100.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$6050.00. 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: September 22, 2011.

Residential Tenancy Branch