



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR; MNR; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenant.

The Landlord's agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that he served the Tenant with the Notice of Hearing documents in the presence of a witness by handing the documents to Tenant, at the rental unit, at 7:30 p.m. on September 28, 2011.

Based on the affirmed testimony of the Landlord's agent, I am satisfied that the Tenant was duly served with the Notice of Hearing documents on September 28, 2011. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in his absence.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Landlord's agent gave the following testimony and evidence:

Monthly rent is \$580.00 per month, due the first day of each month. The Tenant paid a security deposit in the amount of \$290.00 on December 1, 2010.

The Tenant fell behind in rent payments. On September 12, 2011, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") for unpaid rent in the amount of \$280.00 for August and \$580.00 for September, 2011. On September 12, 2011, at 3:10 p.m., the Landlord's agent served the Tenant with the Notice by placing the Notice in the Tenant's mail box at the rental unit.

The Landlord's agent testified that the Tenant has not paid any of the money due to the Landlord and remains in the rental unit. The Landlord asked to set off the security deposit against the unpaid rent.

Analysis

I accept that the Landlord served the Tenant with the Notice to End Tenancy by leaving the Notice in the Tenant's mail box on September 12, 2011. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after leaving the documents in the mail box. The Tenant did not pay any of the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on September 25, 2011 and is overholding. The Landlord is entitled to an Order of Possession and I make that Order, effective 2 days after service of the Order upon the Tenant.

The Landlord's agent has established a monetary claim for unpaid rent in the total amount of \$860.00.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary claim. No interest has accrued on the security deposit.

The Landlord has been successful in its application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

The Landlord has established a monetary claim as follows:

Unpaid rent	\$860.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$910.00
Less security deposit	<u>- \$290.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$620.00

Conclusion

I hereby provide the Landlord an Order of Possession effective 2 days after service of the Order upon the Tenant. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of \$620.00 for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: October 26, 2011.

Residential Tenancy Branch