



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, monetary order for unpaid rent and recovery of the filing fee.

The landlord participated in the conference call hearing but the tenant did not. The landlord presented evidence that the tenant was served with the application for dispute resolution and notice of hearing by posting it to the door. I found that the tenants had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

The landlord testified that the tenant is repeatedly late in paying the rent and only recently paid the \$841.98 over due utility bill. The landlord stated that the tenant had finally paid most of the back rent and currently owes the landlord a balance of \$70.00 in unpaid rent.

The landlord testified that he had not provided the tenant with a receipt stating '*for use and occupancy only, does not reinstate tenancy*' for any of the rent payments made since the September 20, 2011 notice was served on the tenant.

The landlord in this application is seeking a monetary order for unpaid rent and an order of possession for the rental unit.

Analysis

Based on the documentary evidence and undisputed testimony of the landlord, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for unpaid rent.

The tenant currently owes the landlord \$70.00 in unpaid rent and the landlord is entitled to a monetary order for that amount.

Based on the documentary evidence and testimony I find that the tenants were properly served with a notice to end tenancy for non-payment of rent and did not pay the outstanding rent within 5 days of receiving the notice or apply for dispute resolution to dispute the notice.

However as the landlord took receipt of rent monies from the tenants after issuance of the notice and did not provide the tenants with a receipt stating '*for use and occupancy only, does not reinstate tenancy*', (Residential Tenancy Fact Sheet RTB-124, Re-Instatement of Tenancies) the landlord has effectively re-instated the tenancy and must serve the tenants a new 10 day notice to end tenancy for non-payment of rent. Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

The landlord's request for an order of possession based on the September 20, 2011 notice is dismissed without leave to reapply.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

The landlord's September 20, 2011, 10 day notice to end tenancy for non-payment of rent is hereby set aside and the tenancy continues in full force and effect.

I find that the landlord has established a monetary claim for \$70.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I grant the landlord a monetary order under section 67 for the amount of **\$120.00**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) 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: November 9, 2011.

Residential Tenancy Branch