

Decision

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to the landlord's application for an order of possession / a monetary order as compensation for unpaid rent or utilities / retention of the security deposit / and recovery of the filing fee. The landlord's agent participated in the hearing and gave affirmed testimony. The request by the landlord's agent to amend the original application by including an application to retain the security deposit was granted.

Despite being served by way of registered mail with the application for dispute resolution and notice of hearing (the "hearing package"), the tenant did not appear. Evidence provided by the landlord includes the Canada Post tracking number for the registered mail. Information provided on the Canada Post website confirms that the hearing package was "unclaimed" by the tenant.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act, Regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on June 1, 2011. Monthly rent of \$1,250.00 is payable in advance on the first day of each month, and a security deposit of \$625.00 was collected.

Arising from rent which remained overdue on September 1, 2011, the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated September 16, 2011. The notice was served by way of posting on the tenant's door on September 17, 2011. A copy of the notice was submitted into evidence. Subsequently, the tenant made no further payment toward rent and the tenant continues to reside in the unit.

Analysis

Based on the documentary evidence and affirmed / undisputed testimony of the landlord's agent, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated September 16, 2011. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim of \$4,425.00. This is comprised as follows:

\$625.00: balance of unpaid rent for August 2011.

\$3,750.00: unpaid rent combined for September, October & November 2011 (3 x \$1,250.00).

\$50.00: filing fee.

I order that the landlord retain the security deposit of \$625.00 and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$3,800.00 (\$4,425.00 - \$625.00).

The landlord withdrew the aspect of the application concerning recovery of the \$25.00 fee assessed each month for late payment of rent.

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of \$3,800.00. This order may be served on the tenant, filed 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*.

DATE: November 7, 2011

Residential Tenancy Branch