



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 hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order for unpaid rent and to recover the filing fee.

The landlord's agent and the male appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and make submissions to me.

Although served with the Application for Dispute Resolution and Notice of Hearing by personal delivery on October 26, 2011, the female tenant did not appear at the hearing. The landlord's agent testified that the female tenant was served via personal delivery and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act") for the female tenant. Thus the hearing proceeded in the female tenant's absence.

The male tenant appeared and stated that he was not served with either the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") or the Notice of Hearing. The male tenant stated that he only found out about the hearing by seeking advice from a tenant's advocacy group.

Issue(s) to be Decided

Have the tenants breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the landlord to an Order of Possession and monetary relief?

Background and Evidence

The landlord testified and supplied evidence that this month to month tenancy began on July 1, 2011, monthly rent is \$600.00, and a security deposit of \$300.00 was paid by the tenants at the beginning of the tenancy, on or about July 1, 2011.

The landlord gave affirmed testimony and supplied evidence that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on October 13, 2011, by personal delivery on the female tenant. The Notice stated the amount of unpaid rent as of October 1, 2011, was \$600.00.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenants had five days to dispute the Notice.

I have no evidence before me that the tenants applied to dispute the Notice. The landlord's agent provided evidence that the tenants owe \$900.00 through the date of the hearing.

The male tenant stated he was surprised that rent was owed as he has always paid his portion of rent on time every month. The male tenant stated that the female tenant misled him about rent being owed and questioned why the landlord's agent never approached him about unpaid rent.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

As co-tenants, the tenants are jointly and severally liable for meeting the requirements of the tenancy agreement and obligations to the landlord.

I therefore find the tenants have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession effective **at 1:00 p.m. on November 30, 2011**, by agreement of the parties.

I am enclosing an order of possession with the landlord's Decision. This order is a **legally binding, final order**, and may be filed in the Supreme Court of British Columbia should the tenants fail to comply with this order of possession.

As to the request for a monetary order, the Act states that service of a copy of the application must be made to the other party within 3 days of making it.

The Act and principles of natural justice require that the tenant/respondent be informed of the nature of the claim and the monetary amount sought against him. This is one of the many purposes of the Application for Dispute Resolution and the Notice of Hearing. Without being served, the tenant/respondent would easily have any Decision or Order made against him overturned upon Review.

Therefore, on a balance of probabilities, I find the male tenant has not been served with the Notice of Hearing and Application for Dispute Resolution and I **dismiss** the portion of the landlord's Application for a monetary order for unpaid rent against the male tenant.

However, I find that the landlord has established a total monetary claim of **\$950.00** comprised of outstanding rent of **\$900.00** and the **\$50.00** filing fee paid by the landlord for this application, against the female tenant.

At the landlord's request, I allow the landlord to retain the tenants' security deposit of **\$300.00** in partial satisfaction of the claim and I grant the landlord a monetary order under authority of section 67 of the Act for the balance due of **\$650.00**.

I am enclosing a monetary order for **\$650.00** against the female tenant with the landlord's Decision. This order is a **final, legally binding order**, and may be filed in the Provincial Court of British Columbia (Small Claims) should the tenants fail to comply with this monetary order.

Conclusion

The landlord is granted an Order of Possession, may keep the tenants' security deposit in partial satisfaction of the claim and is granted a monetary order for **\$650.00**.

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 17, 2011.

Residential Tenancy Branch