



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 and to recover the filing fee.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on November 2, 2011, the tenant did not appear. The landlord testified that the tenant was served via registered mail to the address at which the tenant resides, provided the tracking number for the registered mail envelope and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the tenant's absence.

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

Preliminary Issues:

The landlord's agent stated that the tenant vacated the rental unit sometime in November, 2011, without notice. The landlord's agent stated that the landlord no longer sought an order of possession. As a result, I have amended the landlord's application, removing the request for an order of possession.

The landlord's agent also requested that the application be amended to request authority to retain the security deposit of the tenant should a monetary order be granted in the landlord's favour. As a result, I have amended the application to include this request.

Issue(s) to be Decided

Has the tenant breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the landlord to an order for monetary relief?

Background and Evidence

The landlord testified that this one year, fixed term tenancy began on March 21, 2011, monthly rent is \$875.00, and a security deposit of \$437.50 was paid by the tenant at the beginning of the tenancy, on or about March 18, 2011.

The landlord gave affirmed testimony and supplied evidence that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on October 17, 2011, via registered mail. The Notice stated the amount of unpaid rent was \$875.00 owed as of October 1, 2011. Documents served in this manner are deemed served five days later under section 90 of the Act. Thus the effective vacancy date of October 31, 2011, listed on the Notice is automatically corrected to November 1, 2011.

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

I have no evidence before me that the tenant applied to dispute the Notice. The landlord provided evidence and gave affirmed testimony that the tenant has not made any rent payments since issuance of the Notice and currently owe unpaid rent of \$1,750.00 through the date of the hearing.

Analysis

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

The tenant has not paid the outstanding rent and did not apply to dispute the Notice and 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.

I find that the landlord has established a total monetary claim of **\$1,875.00** comprised of outstanding rent of **\$1,750.00**, a NSF fee of **\$25.00** and the **\$50.00** filing fee paid by the landlord for this application.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of **\$437.50** 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 **\$1,387.50**.

I am enclosing a monetary order for **\$1,387.50** 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 tenant fail to comply with this monetary order.

Conclusion

The landlord may keep the tenant's security deposit in partial satisfaction of the claim and is granted a monetary order for **\$1,387.50**.

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 18, 2011.

Residential Tenancy Branch