



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPR, MNR, 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 personal delivery on November 16, 2011, the tenant did not appear. The landlord testified that the tenant was served personally and that the delivery was witnessed by the property manager, who also attended the hearing.

I find the landlord successfully demonstrated sufficient delivery of the hearing documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the tenant's absence.

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

Issue(s) to be Decided

Has the tenant breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the landlord to an Order of Possession, an order for monetary relief and to recover the filing fee?

Background and Evidence

The landlord testified that this month to month tenancy began on August 1, 2011, monthly rent is \$850.00, and a security deposit of \$425.00 was paid by the tenant at the beginning of the tenancy, on or about August 1, 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 2, 2011, by posting on the door. The Notice stated the amount of unpaid rent was \$675.00. Documents served in this manner are deemed served three days later under section 90

of the Act. Thus the effective vacancy date of October 12, 2011, listed on the Notice is automatically corrected to October 15, 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 stayed in the rental unit beyond the effective move out day, has not vacated as of the day of the hearing and has not made any rent payments since issuance of the Notice.

The landlord also testified that another Notice was issued in November, which corrected the amount of unpaid rent from \$675.00 to \$850.00. The landlord did not provide a copy of the most recent Notice. The landlord testified that the tenant currently owes \$1,700.00 in unpaid rent, for October and November 2011.

I have allowed the landlord to amend his application to include a request for an additional month's rent.

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 the tenant is overholding beyond the effective move out date.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant.

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 tenant fail to comply with this order of possession.

I find that the landlord has established a total monetary claim of **\$1,750.00** comprised of outstanding rent of **\$1,700.00** and the **\$50.00** filing fee paid by the landlord for this application.

At the landlords' request, I allow the landlord to retain the tenant's security deposit of **\$425.00** 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 **\$0.00**.

I am enclosing a monetary order for **\$1,325.00** 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 is granted an Order of Possession, may keep the tenant's security deposit in partial satisfaction of the monetary claim and is granted a monetary order for **\$1,325.00**.

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 29, 2011.

Residential Tenancy Branch