



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, DRI, CNR, O

Introduction

This hearing was convened by way of conference call in response to applications filed by the landlord and by the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of the application. The tenant's application disputes an additional increase, and applies for an order cancelling a notice to end tenancy for unpaid rent or utilities.

The landlord attended the conference call hearing with a witness, who testified that the tenant was served with the Landlord's Application for Dispute Resolution, notice of hearing and evidence personally on December 31, 2011. The tenant did not attend the hearing. I am satisfied that the tenant was served in accordance with the *Residential Tenancy Act*.

This matter was set for hearing by telephone conference call at 1:30 p.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. The tenant failed to attend to present the tenant's claim, and the landlord appeared and was ready to proceed. In the absence of the tenant, I dismiss the tenant's claim without leave to reapply.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The landlord testified that a tenancy agreement was prepared and signed by the parties on June 3, 2011 wherein the tenant agreed to pay rent in the amount of \$1,800.00 per month, and the tenant had room-mates. Other tenants/room-mates resided in the rental unit prior, rents were collected from the room-mates by whomever the landlord had a tenancy agreement with at the time, who would then pay the landlord. Security deposits

changed hands from tenant to tenant, and the landlord currently holds a security deposit in the amount of \$600.00. The tenancy agreement, a copy of which was provided prior to the hearing states that rent is payable on the 1st day of each month. This tenant still resides in the rental unit.

The landlord further testified that the tenant paid \$800.00 for rent for the month of November, 2011, leaving a balance outstanding of \$1,000.00. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and applied for dispute resolution under file number 784861 requesting an Order of Possession and a monetary order. The Dispute Resolution Officer found that the notice to end tenancy was defective because the copy provided for the hearing did not contain an effective date of vacancy.

The landlord testified that the tenant still has not paid the balance due for November's rent, and also failed to pay any rent for December, 2011. The landlord's witness served the tenant personally on December 15, 2011 in the presence of the landlord with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was also provided for this hearing. The notice is dated December 15, 2011 and states that the tenant failed to pay rent in the amount of \$2,800.00 that was due on December 1, 2011 and contains an effective date of vacancy of December 25, 2011. The tenant further failed to pay any rent for January, 2012.

The landlord claims an Order of Possession and a monetary order in the amount of \$4,600.00.

The landlord's witness testified to serving the tenant personally on December 15, 2011 with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and the tenant threatened the witness at that time.

Analysis

The *Residential Tenancy Act* states that if a tenant fails to pay rent when it is due, the landlord may end the tenancy by serving the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once served, the tenant has 5 days to pay the rent in full or apply for dispute resolution. If the tenant pays the rent, the notice is of no effect. If the tenant does not pay the rent or apply to dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be no less than 10 days after the tenant receives, or is deemed to have received the notice.

In this case, I accept the testimony of the landlord and the landlord's witness that the tenant was served with the notice to end tenancy. The tenant filed for dispute resolution on December 20, 2011 but did not attend the hearing. Therefore, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

The tenant did not move out on the effective date of the notice, and I find that the landlord is entitled to an Order of Possession.

As for the monetary order, I accept the undisputed testimony of the landlord that the tenant owes \$800.00 for November, 2011; \$1,800.00 for December, 2011; and \$1,800.00 for January, 2012; for a total of \$4,600.00. I also find that the landlord holds a security deposit on behalf of the tenant in the amount of \$600.00, and that amount ought to be off-set from unpaid rent owed to the landlord.

The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant. If the tenant is served with the order and fails to comply with the order, the order may be enforced in the Supreme Court of British Columbia as an order of that Court.

I further order the landlord to keep the security deposit in the amount of \$600.00, and I grant a monetary order in favour of the landlord for the balance due of \$4,050.00.

This order is final and binding on the parties and may be enforced.

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: January 13, 2012.

Residential Tenancy Branch