



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began sometime in 2009. Rent in the amount of \$1,500.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$750.00. The Landlord states that as of December 1, 2011, the Tenant owed rental arrears in the amount of \$3,200.00 and further failed to pay full rent for the month of December 2011. The Landlord states that the Tenant owes \$900.00 for December 2011 rent. On January 1, 2012, the Landlord’s witness personally served the Tenant with a notice to end tenancy for non-payment of rent by posting the Notice on the door. The Tenant further failed to pay rent for January 2012. The quantum of the Landlord’s claim is \$5,600.00.

The Tenant did not file an Application for Dispute Resolution and argues that as the Notice contains an incorrect city name in the Tenant's address, the application should be dismissed. The Tenant states that although this part of the Notice is incorrect, the Tenant knew that the Notice was intended for him and was in relation to the unit's address. The Tenant states that he was unaware that he could dispute the Notice and that he only received the first page of the Notice. The Tenant states that he did speak directly to an information officer with the Residential Tenancy Branch about the Notice but states that he was not informed by that officer that he could make an application to dispute the Notice. The Tenant argues that as the rental arrears from prior to December 1, 2011 are two years old that he should not have to pay this money to the Landlord. It is noted that the Tenant did not dispute owing these arrears and stated that it was his intention to move out of the unit.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate the unit.

Based on the Landlord's evidence I find that the Tenant was validly served with a notice to end tenancy for non-payment of rent. The Tenant has not filed an application to dispute the notice and has not paid the outstanding rent. Although the Tenant argues that the Notice is not valid because of the wrong city named, I find this to be only a minor error that does not substantively affect the Notice, as the Tenant knew the Notice was intended to be correctly stated and not meant to deceive anyone. Although the Tenant denies receiving the second page of the Notice, as the Tenant did speak with an information officer about the Landlord's application, I find that the Tenant was provided with information about his rights and find it highly unlikely that an information officer would not ensure that the Tenant knew about the 10 day limit to file a dispute

application. Given these facts, I find that the Notice is valid and the Landlord is entitled to an **Order of Possession**.

Based on the undisputed evidence on the amount of rental arrears owing, I find that the Landlord has established a monetary claim for **\$5,600.00**. The Landlord is entitled to recovery of the \$100.00 filing fee, for a total entitlement of **\$5,700.00**. The **security deposit** plus interest in the amount of \$750.00 is set off from this amount leaving a remaining amount of \$4,950.00 owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. 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.

I order that the Landlord retain the **deposit** and interest of \$750.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$4,950.00**. If necessary, this order may be 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*.

Dated: January 30, 2012.

Residential Tenancy Branch