



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, 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 personal delivery on December 22 and December 28, 2011, the tenant did not appear. The landlord testified that the tenant was served via personal delivery 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 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 and monetary relief?

Background and Evidence

The landlord testified and supplied evidence that this month to month tenancy began on February 15, 2010, monthly rent is \$695.00, and a security deposit of \$347.50 was paid by the tenant at the beginning of the tenancy, on or about February 10, 2010.

The landlord testified that he was a partner of the original listed landlords, and that since the signing of the tenancy agreement, he has taken over the title of the property solely and is the only landlord.

The landlord gave affirmed testimony and supplied evidence that on December 5, 2011, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting on the door. The Notice stated the amount of unpaid rent was \$695.00. Documents served in this manner are deemed served three days later under

section 90 of the Act. Thus the effective vacancy date of December 15, 2011, listed on the Notice is automatically corrected to December 18, 2011.

Additionally, the landlord gave affirmed testimony and supplied evidence that on December 5, 2011, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Utilities, by posting on the door. The Notice stated the amount of unpaid utilities was \$237.20. Documents served in this manner are deemed served three days later under section 90 of the Act. Thus the effective vacancy date of December 15, 2011, listed on the Notice is automatically corrected to December 18, 2011.

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

I have no evidence before me that the tenant applied to dispute the Notices. The landlord provided evidence and gave affirmed testimony that the tenant has not made any rent payments since issuance of the Notice and currently owes unpaid rent of \$1,390.00 through the date of the hearing for December 2011 and January 2012.

The landlord also submitted that the landlord is entitled to monetary compensation for damages to the rental unit.

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 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.

As to the landlord's monetary claim, I dismiss the landlord's claim, with leave to reapply, for damages as the tenancy has not yet ended and a request for compensation for damages to the rental unit is premature until the tenancy has ended.

As to the landlord's claim for unpaid utilities, Section 46 of the Act requires that the landlord serve upon the tenant a written demand for payment of the utilities at least 30 days prior to issuing a Notice. As the landlord failed to submit proof of the written demand, I dismiss the landlord's claim for unpaid utilities, with leave to reapply.

I find that the landlord has established a total monetary claim of **\$1,440.00** comprised of outstanding rent of **\$1,390.00** for December, 2011, and January, 2012, 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 **\$347.50** 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 **\$1,092.50**.

I am enclosing a monetary order for **\$1,092.50** 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 is granted an Order of Possession, may keep the tenant's security deposit in partial satisfaction of the claim and is granted a monetary order for **\$1,092.50**.

The portion of the landlord's application requesting a monetary order for unpaid utilities and damages to the rental unit is dismissed, with leave to reapply.

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 10, 2012.

Residential Tenancy Branch