Dispute Resolution Services

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 due to unpaid rent, authority to retain the tenant's security deposit and to recover the filing fee.

Although served with the Application for Dispute Resolution and Notice of Hearing by personal delivery on January 10, 2012, the tenant did not appear. The landlord's agent testified that she served the tenant 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 and the landlord's agent appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Issue(s) to be Decided

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

Background and Evidence

The landlord testified that this month to month tenancy began on December 1, 2010, monthly rent is $800.00, and a security deposit of $400.00 was paid by the tenant on or about December 1, 2010.

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") listing unpaid rent of $4,435.00 on January 2, 2012, by personal delivery. The effective vacancy date listed on the Notice was January 12, 2012.

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 affirmed testimony that the tenant made one payment of rent since the issuance of the Notice on January 26, 2012, in the amount of $600.00 and currently owes unpaid rent of $3,835.00 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 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 **$3,885.00** comprised of outstanding rent of **$3,835.00** 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 **$400.00** 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 **$3,485.00.**

I am enclosing a monetary order for **$3,485.00** 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 claim and is granted a monetary order for **$3,485.00.**

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: January 31, 2012.

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Residential Tenancy Branch