



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 registered mail on January 19, 2012, the tenant did not appear. The landlord submitted that the tenant was served via registered mail to the address at which the tenant resides, provided the tracking number for the registered mail envelope 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 her evidence orally and in documentary form, and make submissions to me.

Preliminary Issue:

The landlord's agent stated that the tenant moved out of the rental unit on January 31, 2012, without notice, and did not require an order of possession. I therefore have amended the landlord's application to exclude that portion.

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 that this month to month tenancy began on October 1, 2009, monthly rent is \$735.00, and a security deposit of \$352.50 was paid by the tenant at the beginning of the tenancy, on or about September 30, 2009.

The landlord gave affirmed testimony and supplied evidence that on January 3, 2012, 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 \$735.00. Documents served in this manner are deemed served three days later under section 90 of the Act. Thus the effective vacancy date of January 13, 2012, listed on the Notice is automatically corrected to January 16, 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 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 \$735.00 for January 2012, and \$25.00 for an NSF fee for a dishonoured rent cheque.

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 has established a total monetary claim of **\$810.00** comprised of outstanding rent of **\$735.00**, an NSF fee of **\$25.00** 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 **\$352.50** 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 **\$457.50**.

I am enclosing a monetary order for **\$457.50** with the landlords' Decision. This order is a **final, legally binding order**, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the tenant fail to comply with this monetary order.

Conclusion

The landlord may keep the tenant's security deposit in partial satisfaction of the monetary claim and is granted a monetary order for **\$457.50** for the balance due.

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: February 10, 2012.

Residential Tenancy Branch