



Dispute Resolution Services

Page: 1

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.

The landlord testified that she served the tenant the Application for Dispute Resolution and Notice of Hearing by registered mail on February 15, 2012; however the tenant did not appear at the hearing. The landlord testified 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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order, an order of possession and to recover the filing fee?

Background and Evidence

The landlord testified that this tenancy began on September 1, 2010, monthly rent is \$1,600.00, and a security deposit and pet damage deposit of \$800.00 each was paid by the tenant at or near the beginning of the tenancy, on or about August 19, 2011.

The landlord gave affirmed testimony and supplied evidence that on February 2, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by personal delivery. The Notice stated the amount of unpaid rent was \$1,200.00 due on February 1, 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 \$2,800.00 through the date of the hearing, including the March 2012 rent.

The landlord also has claimed the amount of \$137.16 for unpaid utilities, for water usage. The landlord testified that the water is billed to the owner, paid by the landlord's agent and in turn, is billed to the tenant.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

When making a claim for damages or costs under a tenancy agreement or the *Act*, the party making the allegations, the landlord in this case, has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

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 **monetary claim** for unpaid rent of **\$2,800.00**, for February and March 2012.

As to the landlord's claim for unpaid utilities, I find that the landlord submitted insufficient evidence to prove the tenant owed this amount. For instance, the landlord did not provide a copy of the bill sent to the tenant. Without sufficient proof of the amount claimed, I am unable to determine that the tenant owed this amount. I therefore **dismiss** the landlord's claim for unpaid utilities, **with leave to reapply**.

I find that the landlord has established a total monetary claim of \$2,850.00 comprised of outstanding rent of **\$2,800.00** 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 \$800.00 and pet damage deposit of \$800.00 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 **\$1,250.00**.

I am enclosing a monetary order for **\$1,250.00** 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 and pet damage deposit in partial satisfaction of the claim and is granted a monetary order for **\$1,250.00**.

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: March 01, 2012.

Residential Tenancy Branch