



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 registered mail on February 12, 2012, the tenant did not appear. The landlord successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord's agent appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in documentary form, and make submissions to me.

As a preliminary issue, the landlord's agent stated that the tenant has now vacated the rental unit and that he no longer requests an order of possession. As a result, I have excluded that portion of the landlord's application from consideration.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for recovery of the filing fee?

Background and Evidence

The landlord submitted that this month to month tenancy began on January 15, 2011, monthly rent started at \$900.00, was increased to \$938.00, and a security deposit of \$450.00 was paid by the tenant at the beginning of the tenancy.

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 posting it on the door. The Notice stated the amount of unpaid rent was \$938.00. Documents served in this manner are deemed served three days later under

section 90 of the Act. Thus the effective vacancy date of February 12, 2012, listed on the Notice is automatically corrected to February 15, 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 since issuance of the Notice, on behalf of the tenant, the landlord received a payment of \$450.00 in February and \$450.00 in March, 2012, leaving a deficit of \$976.00, through the date of the hearing, including monthly rent for March, 2012.

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.

As to the landlord's claim for a monetary order, I find that the landlord submitted insufficient evidence to substantiate that the monthly rent was increased from \$900.00 to \$938.00 in accordance with the Act. Without this evidence, I find that I am unable to make a determination that rent had increased beyond \$900.00 per month.

I therefore find that the tenant was deficient in her rent for February, 2012, in the amount of \$450.00 and for March, 2012 in the amount of \$450.00.

As I have found a deficiency in the tenant's rent of \$900.00 for February and March, in total, I find the landlord has established a total **monetary claim** of **\$950.00** comprised of outstanding rent of **\$900.00** 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 **\$450.00** 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 **\$500.00**.

I am enclosing a monetary order for **\$500.00** 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 a monetary order for **\$500.00**.

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 06, 2012.

Residential Tenancy Branch