



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Tenant: CNR, FF
For the Landlord: MNR, MNSD, OPR, FF

Introduction

This hearing dealt with cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") and for recovery of the filing fee.

The landlord applied for a monetary order for unpaid rent, for authority to retain the tenant's security deposit, for an order of possession and to recover the filing fee for the application.

Despite having his own application set for this day, and having been served a notice of the landlord's application and Notice of Hearing by personal delivery on February 28, 2012, as testified to by the landlord, the tenant failed to appear for the telephone conference call hearing. 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 prior to the hearing, and to 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 an order of possession, a monetary order and for authority to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

Although there is no written tenancy agreement, the landlord testified that this month to month tenancy started in 2004, current monthly rent is \$1,700.00 and that the tenant originally paid a security deposit of \$750.00. The landlord stated that during the course

of the tenancy, the tenant used his security deposit to make payments of rent and that he, the landlord, no longer holds a security deposit for the benefit of the tenant.

The landlord stated the tenant was delivered a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), via personal delivery on February 22, 2012, listing an amount of \$8400.00 in unpaid rent as of February 1, 2012. The effective move out date was March 1, 2012, which automatically self-corrects under the Act to March 3, 2012.

The landlord submitted that the tenant made a payment of \$400.00, just prior to the Notice being issued and that the actual amount listed on the Notice should have been \$8000.00.

The landlord submitted that the tenant failed to pay any rent after receipt of the Notice. Upon a review of the evidence submitted by the landlord, the landlord agreed that the amount owed by the tenant as of the day of the hearing was \$9500.00, including unpaid rent for March 2012.

The landlord also submitted that he had heard the tenant vacated the rental unit sometime during March, but has not been able to determine if the tenant has fully abandoned the rental unit.

Analysis

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

Tenant's application-

As the tenant failed to appear to support his application, I **dismiss** the tenant's application, **without leave to reapply**.

Landlord's application-

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant disputed the Notice. Where a Notice is disputed, the tenant must be able to show that he does not owe to rent to the landlord or had some other legal right to withhold rent.

Although I have dismissed the tenant's application for his failure to attend the hearing, the tenant failed to submit any evidence with his application and therefore was unable to show that he did not owe the rent nor had a legal right to withhold the rent.

I am therefore satisfied that the tenant owed the landlord rent when the Notice was issued, that he did not pay the outstanding rent to the landlord within five days of

receiving the Notice and the tenant did not establish that he had the legal right to withhold the rent owed.

I therefore 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 for enforcement should the tenant fail to comply with this order of possession.

I find that the landlord has established a monetary claim for **\$9550.00**, comprised of unpaid rent through March, 2012 and for recovery of the filing fee in the amount of \$50.00

I therefore **grant** the landlord a monetary order pursuant to section 67 of the Act for **\$9550.00**.

I am enclosing a Monetary Order for \$9550.00 with the landlord's Decision. This order is a **legally binding, final 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 tenant's application is dismissed without leave to reapply.

The landlord is granted an order of possession and a monetary order in the amount of \$9550.00.

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 14, 2012.

Residential Tenancy Branch