



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. He testified that he served the Notice of a Dispute Resolution Hearing to the tenant by delivering the notice in the tenant's mailbox. The landlord stated that the tenant responded by text message that she may or may not attend the hearing, as she is working that day. The landlord said that on the day of the hearing, he sent the tenant another text message reminding her to attend the hearing. The tenant did not participate and the hearing proceeded in the tenant's absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single detached home. Pursuant to a written agreement, the month to month tenancy started in July 2010. The rent is \$1300.00 per month and the tenant paid a security deposit of \$650.00.

The landlord testified that the tenant has not paid rent for February and March 2012. Since the landlord's claim is for \$11,700.00, the landlord was asked at the hearing to provide a detailed account of his claim. The landlord stated that the tenant owes rent as follows:

- July 2010: \$1300.00
- December 2010: \$1300.00
- April 2011: \$1300.00
- May 2011: \$ 200.00
- June 2011: \$ 200.00
- July 2011: \$ 500.00
- August 2011: \$ 900.00
- September 2011: \$1300.00
- November 2011: \$1300.00
- February 2012: \$1300.00
- March 2012: \$1300.00

In his documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy served on the tenant on February 13, 2012 by posting the notice on the tenant's door. The landlord also provided a Proof of Service for the notice, indicating that the notice was served March 5, 2012. The landlord clarified that he waited 10 days, then gave the tenant the proof of service on that day; however the notice to end tenancy was served on February 13, 2012.

Analysis

I accept the landlord's undisputed testimony that he served the tenant with the Notice of Dispute Resolution by leaving the notice in the tenant's mailbox. Although this is not a proper manner pursuant to section 89 of the *Residential Tenancy Act*, I find under section 71(2) that in the circumstances, the tenant has been sufficiently served and that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution. The landlord's Notice to End Tenancy is valid and on that basis the landlord is entitled to an order of possession.

Concerning the unpaid rent; the landlord bears the burden to prove his claim against the tenant. The landlord's claim for unpaid rent is substantial however he provided no documentary evidence to support the quantum of such claim. He stated that the tenant did not pay rent for several months, however provided no explanation for waiting over a year to deal with this problem. A remedy for the landlord would have been to seek assistance through dispute resolution to resolve the issue as it occurred. Further, I have no evidence from the landlord that he took steps to collect rent. I find this uncharacteristic of a landlord whose primary role in a tenancy is to ensure rent is paid by a tenant. He did not provide any records that a businesslike landlord would be expected to maintain; he did not produce a ledger or an accounting book or any entries concerning this tenancy. I find that the landlord has not proven on a balance of probabilities that rent has not been paid for all of the months as claimed, and I find insufficient evidence to support such a retroactive claim.

In the details portion of his application for dispute resolution, the landlord stated that the tenant did not pay rent for February and March 2012, and I will grant the landlord a monetary order for these two months.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord established a claim of \$2600.00. I authorize the landlord to retain the tenant's \$650.00 security deposit for a balance owing of \$1950.00. Since the landlord was partially successful, I award the landlord recovery of \$50.00 towards the filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$2000.00.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

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 28, 2012.

Residential Tenancy Branch