



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's original application for an order of possession / a monetary order as compensation for unpaid rent or utilities / and recovery of the filing fee. The landlord participated in the hearing and gave affirmed testimony. During the hearing the landlord requested an amendment to his application to include retention of the security deposit; the landlord's request was so granted.

Despite in-person service of the application for dispute resolution and notice of hearing on May 9, 2012, the tenant did not appear.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the term of tenancy is from February 14 to August 14, 2012. Monthly rent is \$2,300.00, and a security deposit in that same amount was collected. Despite an indication on the tenancy agreement that rent is due and payable on the first day of each month, the landlord testified that this was an error, and that the parties reached an understanding pursuant to which rent is due and payable on the 14th day of each month.

Arising from rent which was unpaid when due on April 14, 2012, the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated April 26, 2012. The notice was served by way of posting on the tenant's door on that same date. A copy of the notice was submitted in evidence. Subsequently, the tenant has made no further payment toward rent and continues to reside in the unit.

The 10 day notice also makes reference to a charge in the amount of \$100.00 for “bounce[d] cheques.” Further, the landlord claims in his application that the tenant has not paid all utilities, however, the 10 day notice is silent in this regard.

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent or utilities dated April 26, 2012. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenant 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. Accordingly, I find that the landlord has established entitlement to an order of possession.

As for the monetary order, I find that the landlord has established entitlement to a claim in the total amount of \$4,650.00, which is comprised as follows:

\$2,300.00: unpaid rent for the period April 14 to May 13, 2012

\$2,300.00: unpaid rent for the period May 14 to June 13, 2012

\$50.00: filing fee

I order that the landlord retain the security deposit of \$2,300.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$2,350.00 (\$4,650.00 - \$2,300.00).

In regard to the landlord’s concern to recover costs of \$100.00 arising from “bounce[d] cheques,” as there is neither any specific provision for the assessment of this fee against the tenant in the tenancy agreement, nor evidence to support the assessment of this fee against the landlord by his bank, this aspect of the application is hereby dismissed.

As to the application to recover non-specific costs arising from unpaid utilities, in the absence of either a reference to this on the 10 day notice, or related and supportive documentary evidence, this aspect of the application is hereby dismissed.

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant.

Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$2,350.00**. Should it be necessary, this order may be served on the tenant, filed 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: May 29, 2012.

Residential Tenancy Branch