



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, CNR, LAT, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied to cancel a Notice to end tenancy for unpaid rent and an order that the tenant be allowed to change the locks to the unit.

The agent for the landlord provided affirmed testimony that on June 14, 2012, she personally served the tenant copies of the Application for Dispute Resolution and Notice of Hearing, at the tenant's rental unit. Service occurred in the afternoon

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

The landlord confirmed receipt of notice of the tenant's Notice of Hearing; however, by 1:40 p.m. the tenant had failed to attend the hearing in support of his application.

Preliminary Matter

As the tenant failed to attend the hearing by 1:40 p.m.; when the hearing was ended, I dismissed his application.

The landlord stated July, 2012, rent has not been paid; the landlord is at liberty to submit a claim for losses beyond June, 2012, rent.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on February 1, 2012; rent was \$825.00 per month, due on the first day of each month. A deposit in the sum of \$412.50 was paid. A copy of the signed tenancy agreement was supplied as evidence.

The landlord stated that on June 8, 2012, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of June 18, 2012, was served by personal delivery to the tenant on June 8, 2012, at the tenant's rental unit, by C.R.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$412.50 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

On June 13, 2012, the tenant applied to dispute the Notice, a copy of which he supplied as evidence. The tenant failed to attend his hearing and his application to dispute the Notice was dismissed.

Analysis

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on June 18, 2012, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant's application to cancel the Notice has been dismissed and there was no evidence before me that the tenant paid June, 2012, rent owed. Therefore; pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$412.50 for June, 2012, and that the landlord is entitled to compensation in that amount.

Section 72(2) of the Act provides a dispute resolution officer with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant. Therefore, I find that the landlord may retain the tenant's security deposit in the amount of \$412.50, in satisfaction of the monetary claim.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$462.50, which is comprised of June, 2012, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$412.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$50.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenant's application is dismissed.

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: July 04, 2012.

Residential Tenancy Branch