



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, for authority to retain the tenant's security deposit and to recover the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. 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 for the rental unit due to unpaid rent, a monetary order and to recover the filing fee?

Background and Evidence

This 1 year, fixed term tenancy began on February 1, 2012, monthly rent is \$1400.00, and a security deposit of \$700.00 was paid by the tenant at the beginning of the tenancy.

The landlord supplied evidence that on July 8, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by delivery to an adult answering the knock on the door at the rental unit, listing unpaid rent of \$1400.00 as of July 1, 2012. The effective vacancy date listed on the Notice was July 18, 2012.

The Notice was not delivered in a manner complying with the Act, as the adult answering the door did not reside with the tenant. However, I questioned the tenant and he acknowledged receiving the Notice on the date it was delivered.

I therefore accept that the Notice was sufficiently served and the hearing proceeded.

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 stated that the tenant additionally failed to pay the rent for August and currently owes \$2800 in unpaid rent for July and August, as well as \$100 for NSF fees and \$50 in late fees.

Tenant CK, who testified for the tenants, stated that she was a listed tenant on the tenancy agreement, but has not lived there until recently, when she discovered that tenant JK's caregivers were taking financial advantage of him.

The tenant acknowledged owing the amount claimed by the landlord, including the NSF fees and the late fees, further stating that she believed that she had resolved the issues of the application the day prior to the hearing. The tenant stated that the rent owed as well as the September rent would be forthcoming by the end of August.

The landlord acknowledged having discussed the issues with the tenants, but still requested the relief sought in the application, with the understanding that she would not serve the order of possession if the tenants complied with their payment promise.

The tenants were then informed that it was still possible to settle the issues after the hearing; however the landlord was entitled to the relief sought in the application.

Analysis

I find the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent or apply to dispute the Notice within five days of service 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.

Conclusion

I find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant.

I grant the landlord a final, legally binding order of possession, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement.

I find that the landlord has established a total monetary claim of \$3000 comprised of outstanding rent of \$2800 through August, 2012, NSF fees of \$100, late fees of \$50 and the \$50 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 \$700 in partial satisfaction of the claim.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$2300, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement.

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: August 21, 2012.

Residential Tenancy Branch