



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, and to recover the filing fee.

The landlord and an agent for the landlord appeared at the teleconference hearing. As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The agent for the landlord (the "agent") testified that he personally served the tenant with the Notice on August 30, 2012, between 7:00 p.m. and 8:00 p.m. The agent stated that the tenant signed the Notice and the Notice was faxed as evidence the following day. I find the tenant was served in accordance with the *Act*.

Preliminary and Procedural Matter

Section 59(5)(a) of the *Act* provides the authority decline an application when it does not comply with 59(2)(b) of the *Act*, by disclosing the full particulars of the claim. The landlord has not provided a detailed calculation for their monetary claim as required. I am unable to determine what the monetary amount being claimed consists of and therefore, **I dismiss** the monetary claim portion of the application, **with leave to reapply**.

Background and Evidence

A month to month tenancy agreement started either February or March 2011. Monthly rent in the amount of \$1,450.00 which included a fixed rate of \$100.00 per month for utilities was due on the first day of each month. A security deposit was not paid by the tenant at the start of the tenancy. The landlord stated the tenant believes she paid a security deposit, however, the landlord disputes that the tenant ever paid the required security deposit pursuant to the written tenancy agreement.

On August 4, 2012, the landlord personally served the tenant at the rental unit address with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"). The effective date on the 10 Day Notice indicated August 14, 2012. The landlord testified that when the tenant did not vacate the rental unit on August 14, 2012, the landlord served the tenant again with the same 10 Day Notice on August 15, 2012 and had the tenant sign a proof of service document on the second occasion. The landlord stated the tenant did not dispute the 10 Day Notice or pay the unpaid rent within 5 days as indicated on the second page of the 10 Day Notice.

The landlord testified that the tenant has also failed to pay rent for September and continues to occupy the rental unit and is seeking an order of possession as a result.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession – Based on the undisputed testimony of the landlord, I accept that the landlord served the tenant with a 10 Day Notice and that the tenant failed to pay the rent owed in full or dispute the 10 Day Notice within the 5 days of being served with the 10 Day Notice as granted under section 46(4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the notice. Therefore, **I grant** the landlord an order of possession effective **two days after service** on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court.

I find the landlord's application has merit and, therefore, **I award** the recovery of the filing fee and **I grant** the landlord a monetary order pursuant to section 67 of the *Act* in the amount of **\$100.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I grant the landlord an order of possession effective **two days after service** on the tenants.

I dismiss the landlord's monetary claim with leave to reapply. I note this does not extend any applicable time limits under the *Act*.

I grant the landlord a monetary order of \$100.00 to recover the filing fee.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: September 28, 2012

Residential Tenancy Branch