



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 and money owed or compensation for damage or loss, 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.

The evidence was discussed and the tenant said that he submitted evidence the week prior to the hearing. However, the evidence was not placed in the file. The landlord acknowledged receiving the tenant's evidence. I was able to view the evidence after locating the same on the Residential Tenancy Branch ("RTB") system.

No other issue was raised regarding service of the evidence.

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

I have reviewed all oral and written evidence before me that met the submission requirements of the rules of procedure. 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 single room occupancy tenancy began on November 1, 2011, monthly rent is \$600.00, and a security deposit of \$325.00 was paid by the tenant at the beginning of the tenancy.

The landlord gave evidence that on August 2, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by leaving it with the tenant,

listing unpaid rent of \$350.00 as of August 1, 2012. The effective vacancy date listed on the Notice was August 12, 2012.

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.

The tenant confirmed that he had not applied to dispute the Notice.

The landlord stated that the tenant did not make a rent payment within five days of receiving the Notice.

The parties did, however, agree that the landlord received a cheque from social assistance for the September rent payment, in the first week of September, which was returned to the tenant.

The landlord said that the amount of unpaid rent as of the day of the hearing was \$950.00. The landlord also requested a late payment of fee \$25.00 each for two months of late rent payments.

Although the tenant failed to make application for dispute resolution within 5 days of receiving the Notice, I note that the tenant denied owing the amount listed on the Notice; however the tenant failed to present evidence of having made that payment.

The tenant also presented that he would immediately following the hearing, he intended to give the September rent cheque to the landlord.

I note that the landlord also requested a monetary claim for damages to the rental unit and the tenant requested that I address the issue of his security deposit. I informed both parties that these issues must be addressed following the end of the tenancy as both issues were premature.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

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 therefore 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 as an order of that Court.

I find that the landlord has established a total monetary claim of \$1050.00 comprised of outstanding rent of \$950.00 through September, 2012, \$50.00 for late payments of rent fees and the \$50.00 filing fee paid by the landlord for this application.

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1050.00, 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 as an order of that Court.

If the tenant does pay the September rent cheque as promised, the monetary order will accordingly adjusted and only the remaining balance will be enforceable.

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: September 14, 2012.

Residential Tenancy Branch