



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to cross - applications by landlord and tenant.

The landlord sought an Order of Possession due to unpaid rent, a Monetary Order to recover rental arrears and inclusive of recovery of the filing fee associated with this application.

The tenant sought to cancel a 10 Day Notice for Unpaid Rent (Notice to End), and recovery of the filing fee associated with this application.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing personally in accordance with Section 89 of the Residential Tenancy Act (the Act); and, despite having made their own application for dispute resolution and it being set down for this date, the tenant did not participate in the conference call hearing. The landlord was given full opportunity to be heard, to present evidence and to make submissions. The landlord advised the tenant still resides in the rental unit.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Should the Notice to End be cancelled?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The testimony of the landlord and the tenant is that the tenancy began on July 26, 2012. Rent in the amount of \$500.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$250.00. The tenant failed to pay rent for the month of September 2012, and the landlord served the tenant with a notice to end tenancy for non-payment of rent on September 03, 2012. The tenant further failed to pay rent in the month of October 2012. The quantum of the landlord's monetary claim is for the rent arrears for the aforementioned 2 months in the amount of **\$1000.00**. The landlord further seeks an immediate **Order of Possession**.

The tenant did not dispute the Notice to End within the required 5 days to do so and has not applied for more time to make this application.

Analysis

Based on the testimony of the landlord and the tenant I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant did not attend this hearing and has not provided any proof they paid the outstanding rent and despite having applied for dispute resolution to dispute the notice to end the tenant did not do so within the required 5 days as permitted by Section 46 of the Act, and was therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. As a result of all the above, the tenant's application **is hereby dismissed**, without leave to reapply.

Based on the above facts I find that the landlord is entitled to an **Order of Possession**. As for the monetary order, I find that the landlord has established a claim for **\$1000.00** in unpaid rent. The landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$1050.00**.

Conclusion

The tenant's application **is dismissed**.

I grant an Order of Possession to the landlord **effective 2 days** from the day it is served upon the tenant. The tenant must be served with this Order of Possession. 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.

I Order that the landlord retain the deposit of \$250 in partial satisfaction of the claim and I grant the landlord an order under Section 67 of the Act for the balance due of **\$800.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: October 15, 2012

Residential Tenancy Branch