



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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 tenant did not appear at the telephone conference call hearing. The landlord appeared and gave affirmed testimony.

The landlord testified that the tenant was served with the Application for Dispute Resolution and Notice of Hearing (the Hearing Package) by registered mail on September 25, 2012. The landlord gave evidence of the tracking number of the registered mail and a search of the records indicates that the tenant collected the registered mail.

I find the tenant was served in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and to refer to documentary evidence submitted prior to the hearing.

I have reviewed all oral and written evidence before me that met the 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

The landlord said this tenancy began on July 1, 2011, monthly rent is \$1050.00, and a security deposit of \$525.00 was paid by the tenant at the beginning of the tenancy. There was no written tenancy agreement.

The landlord gave evidence that on September 6, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting the Notice on the door, listing unpaid rent of \$770.00 as of September 1, 2012. The effective vacancy date listed on the Notice was September 16, 2012. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to September 19, 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 landlord stated that the tenant made a payment of \$450.00 at the end of September, failed to pay rent to October, and as of the date of the hearing, the tenant owed \$1370.00 in unpaid rent.

I have no evidence before me that the tenant applied to dispute the Notice.

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 therefore 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 as an order of that Court.

I also find that the landlord has established a total monetary claim of \$1420.00 comprised of outstanding rent of \$1370.00 through October, 2012, and the \$50.00 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 \$525.00 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 \$895.00, 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.

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 12, 2012.

Residential Tenancy Branch