



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR

Introduction

The landlord filed an application for dispute resolution on September 18, 2012, seeking an order of possession and a monetary order as compensation for unpaid rent, by way of a direct request proceeding. By decision dated October 4, 2012, the dispute resolution officer set out the reasons for adjourning the matter to a participatory hearing. Included with the landlord's copy of that decision were notices of hearing. In the decision, the landlord was instructed to "serve the tenant via registered mail or personal service with a copy of the notice of hearing within 3 days of receiving" the decision.

This participatory hearing was scheduled to commence at 1:30 p.m. by way of telephone conference call on November 2, 2012. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to either or both of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy is from May 1, 2012 to April 30, 2013. Monthly rent of \$1,000.00 is due and payable in advance on the first day of each month, and a security deposit of \$500.00 was collected.

Arising from rent which remained unpaid when due on September 1, 2012, the landlord issued a 10 day notice to end tenancy for unpaid rent dated September 5, 2012. The notice was served by way of posting on the tenant's door on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is September 15, 2012. Subsequently, in September on a particular date which neither party could confirm, the tenant made a limited payment toward September's rent in the amount of \$500.00. The tenant has made no further payment toward rent for September, and has not paid rent for October. As for

November's rent, the tenant claims that payment is in process, and the landlord testified that as processing takes a number of days, she is presently unable to confirm whether November's rent has been paid.

The landlord testified that \$50.00 of the \$550.00 originally sought in the direct request proceeding was comprised of a \$25.00 fee assessed for late payment of September's rent, and a \$25.00 fee assessed for an NSF cheque.

Analysis

Based on the documentary evidence and testimony, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated September 5, 2012. The tenant did not pay the full amount of rent outstanding within 5 days of receiving the notice, and did not apply to dispute the notice. The tenant 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. Accordingly, I find that the landlord has established entitlement to an order of possession.

As for the monetary order, I find that the landlord has established entitlement to a claim of \$1,500.00, which is comprised of \$500.00 in unpaid rent for September, and \$1,000.00 in unpaid rent for October.

A claim filed by way of a direct request proceeding is limited to an application for a monetary order as compensation for unpaid rent, and an order of possession. Subsequent to adjournment of the direct request proceeding pursuant to the decision dated October 4, 2012, the landlord has not amended the original application to include a monetary order as compensation for recovery of either the \$25.00 fee assessed for late payment of September's rent, or the \$25.00 fee assessed for an NSF cheque. These aspects of the original application are hereby dismissed with leave to reapply.

In relation to the disposition of the security deposit at the end of tenancy, the attention of the parties is drawn to section 38 of the Act which speaks to **Return of security deposit and pet damage deposit**.

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,500.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced 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: November 02, 2012.

Residential Tenancy Branch