



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 was scheduled in response to an application by the landlord for an order of possession / a monetary order as compensation for unpaid rent or utilities / and recovery of the filing fee. The landlord attended the hearing and gave affirmed testimony. Despite service of the application for dispute resolution and notice of hearing (the “hearing package”) on October 26, 2012, the tenant did not appear.

During the hearing the landlord requested an amendment to the application to include an application to retain the security deposit. The request was so granted.

Issue(s) to be Decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on March 19, 2005. Currently, the monthly rent is \$625.00, and the landlord testified that a security deposit of \$280.00 was collected.

Arising from rent which remained overdue on October 1, 2012, the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated October 4, 2012. The notice was served by way of posting on the tenant’s door on October 6, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is October 19, 2012. Subsequently, the tenant has made no further payment toward rent or utilities and he continues to reside in the unit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent or utilities dated October 4, 2012. The tenant did not pay the outstanding rent or utilities 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 \$2,290.00, which is comprised as follows:

\$365.00: *unpaid rent for August*
\$625.00: *unpaid rent for September*
\$625.00: *unpaid rent for October*
\$625.00: *unpaid rent for November*
\$50.00: *filing fee*

I order that the landlord retain the security deposit of \$280.00, plus interest of \$9.92 (total: \$289.92), and I grant the landlord a monetary order for the balance owed of \$2,000.08 (\$2,290.00 – 289.92).

While the landlord's application also refers to unpaid utilities in the amount of \$120.06, I find that the reference to unpaid utilities in this amount on the 10 day notice to end tenancy for unpaid rent or utilities has a line through it. Further, there is no reference to utilities in any way in the copy of the tenancy agreement which is in evidence before me. Finally, there is no evidence of a written demand for payment of utilities having been issued to the tenant, as referenced in section 46(6) of the Act which addresses **Landlord's notice: non-payment of rent**. Accordingly, this aspect of the landlord's application is hereby dismissed.

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 \$2,000.08. 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 30, 2012.

Residential Tenancy Branch