



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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, for authority to retain the tenant's security deposit and to recover the filing fee.

The landlord and his agent initially appeared, were affirmed into the hearing and were given an opportunity to ask question about the hearing process.

The landlord said that the tenant was served with the Notice of Hearing on November 2, 2012, by registered mail, and by additionally posting it on the door on the same date. The landlord supplied testimony of the tracking number for the mail.

Thereafter the landlord's agent provided testimony and responded to questions, referring to relevant documentary evidence submitted prior to the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter- After having heard enough evidence to make a decision on the landlord's application, and shortly prior to concluding the telephone conference call hearing, the tenant appeared, 16 minutes after the hearing began.

The tenant claimed that he did not receive the Notice of Hearing until the day before the hearing. The tenant also claimed that he had filed an application for dispute resolution himself, after having received the 10 Day Notice to End Tenancy for Unpaid Rent, in dispute of that Notice. A search of the records showed no such application.

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 testified that this tenancy began on August 1, 2012, monthly rent is \$600.00 and the tenant paid a security deposit of \$250.00 at the beginning of the tenancy.

The landlord gave evidence that on October 19, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting on it the tenant's door, listing unpaid rent of \$1200.00 as of October 1, 2012. The effective vacancy date listed on the Notice was October 30, 2012.

Section 90 of the Act states that documents served in this manner are deemed delivered three days later. Thus the tenant was deemed to have been served the Notice on October 22, 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 November 1, 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 received the Notice, and although he claimed to have disputed the Notice by filing an application for dispute resolution, I have no evidence before me that the tenant applied to dispute the Notice.

Additionally the landlord said that the tenant has not paid rent for November or December 2012.

The landlord's monetary claim is \$2000.00, for unpaid rent for October and November, and for unspecified damages to the rental unit, without having provided a breakdown of such costs or damage.

The tenant said he had proof of having paid the rent in full; however the tenant did not supply that proof.

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.

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.

As the tenant contradicted himself in the hearing by claiming to have file an application, but did not when a search of the records showed no such filing, I found I could not rely upon the tenant's testimony that he had paid rent.

I therefore accepted the evidence of the landlord and I find that the landlord has established a total monetary claim of \$1250.00 comprised of unpaid rent of \$1200.00 for October and November, 2012, and the \$50.00 filing fee paid by the landlord for this application.

I dismiss the landlord's request for damages as the landlord offered no proof of damages or of having sustained a loss.

Conclusion

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.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of \$250.00 in partial satisfaction of his monetary award and 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 \$1000.00, 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.

The landlord is at liberty to apply for any remaining unpaid rent for this tenancy.

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* and is being mailed to both the applicant and the respondent.

Dated: December 05, 2012.

Residential Tenancy Branch