



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 parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the start of the hearing, neither party raised any issue regarding service of the evidence or application.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

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.

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

This tenancy began on February 1, 2011, monthly rent is \$1350.00, and a security deposit of \$675.00 was paid by the tenant at the beginning of the tenancy.

The landlord gave evidence that on November 8, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by leaving it with the tenant, listing unpaid rent of \$4169.00 plus unpaid utilities of \$238.00 as of November 1, 2012. The effective vacancy date listed on the Notice was November 18, 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.

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

The landlord stated that the tenant did not make a payment of rent after the issuance of the Notice and has now vacated the rental unit. The landlord said that the tenant owed rent of \$800.00 for August, and \$1350.00 each for September, October, and November, for a total of \$4850.00. The landlord also submitted that the tenant owed unpaid utilities of \$150.00. The landlord did not provide proof of a utility bill.

The tenant acknowledged owing this amount; however, the tenant further stated that the landlord was required under the Act to serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent after the first deficient month in order to mitigate his loss.

The tenant confirmed that he has vacated the rental unit as of the first few days in December.

Analysis

Based on the relevant 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 although the landlord is entitled to an order of possession, one is no longer necessary as the tenant has now vacated the rental unit.

I also find that the landlord has proven a monetary claim for unpaid rent in the amount of \$4850.00, as confirmed by the tenant.

I find that the landlord has submitted insufficient evidence that the tenant owed unpaid utilities as the landlord failed to submit proof of a bill and I dismiss his claim for \$150.00.

I find the landlord is entitled to recover the filing fee of \$50.00 paid by the landlord for this application.

Due to the above, I find the landlord is entitled to a monetary award of \$4900.00, comprised of unpaid rent of \$4850.00 and the filing fee of \$50.00.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of \$675.00 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 \$4225.00, 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.

Conclusion

The landlord has proven a total monetary claim of \$4900.00, is directed to retain the tenant's security deposit of \$675.00 in partial satisfaction and is granted a monetary order for the balance due, for \$4225.00.

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 19, 2012.

Residential Tenancy Branch