



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55; and
2. A Monetary Order for unpaid rent - Section 67.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice to end Tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amount claimed?

Background and Evidence

The tenancy started on October 1, 2011. Rent of \$1,650.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$825.00 as a security deposit. The Tenant failed to pay rent for October 2012 and on October 10, 2012 the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) by registered mail. The Notice indicates that rent of \$1,650.00 is unpaid. The Tenant has not filed an Application for Dispute Resolution. The Landlord believes that the Tenants are still in the unit but the last confirmation of this occurred in

late October or early November 2012 when the neighbours informed the Landlord that the Tenants were still in the unit. The Landlord has since been unable to contact the Tenants by phone as the service has been discontinued and no response has been made to an email from the Landlord. On November 22, 2012, the Landlord sent an amended application to the Tenant at the dispute address by registered mail. The amended application seeks a significantly higher amount of unpaid rent than contained in either the Notice or the original application. The Landlord states that it is highly unlikely that there will be any success in enforcing a monetary order and that the main concern is to regain possession of the unit.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's evidence I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has not filed an application to dispute the notice and has not paid the outstanding rent. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. I also find that the Landlord has established a monetary claim for **\$1,650.00** in unpaid rent. Setting the security deposit of **\$825.00** plus zero interest off this entitlement leaves **\$825.00** owed by the Tenant to the Landlord.

As the Landlord sent the amended application to the dispute address without determining whether the Tenants were still in the unit, and considering that the Notice has a move-out date of October 20, 2012, I find that the Landlord has not substantiated on a balance of probabilities that the Tenants were residing at the unit at the time that

the amended application was sent. Accordingly, I dismiss the claim contained in the amended application with leave to reapply.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. 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.

I order that the Landlord retain the **deposit** and interest of \$825.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$825.00**. If necessary, this order may be 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 Act.

Dated: December 5, 2012.

Arbitrator
Residential Tenancy Branch