



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 tenant did not appear at the telephone conference call hearing. The landlord appeared and gave affirmed testimony.

The landlord gave evidence that the tenant was served with the Application for Dispute Resolution and Notice of Hearing (the Hearing Package) by registered mail on December 14, 2012. The landlord supplied the tracking number of the registered mail.

I find the tenant was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and to refer to documentary evidence timely 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.

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 gave evidence that this tenancy began on July 29, 2009, monthly rent began at \$1700.00, is currently \$1760.00, and a security deposit of \$850.00 was paid by the tenant at the beginning of the tenancy.

The landlord gave evidence that on December 3, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by registered mail, listing unpaid rent of \$1810.00 as of December 1, 2012. The effective vacancy date listed on the Notice was December 18, 2012.

The landlord explained that included in the unpaid rent was a late payment fee of \$50.00.

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 landlord stated that the tenant has not made a monthly rent payment since the issuance of the Notice and as of the date of the hearing, the tenant owed \$3570.00 in unpaid rent. Included in this amount was the request for a late payment fee of \$50.00 for December 2012.

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

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.

I also find that the landlord has established a total monetary claim of \$3595.00 comprised of unpaid rent of \$1760.00 for December 2012, \$1760.00 for unpaid rent for

January 2013, a late payment fee of \$25.00 for December 2012, and the \$50.00 filing fee paid by the landlord for this application.

I have not granted the landlord's request for a late payment fee of \$50.00 due to the Residential Tenancy Branch Regulation 7, providing that a landlord may charge only up to \$25.00 for a late payment fee.

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 \$850.00 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 \$2745.00, 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.

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: January 04, 2013.

Residential Tenancy Branch

