



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 to recover the filing fee.

The landlord appeared; the tenant did not appear.

The landlord gave evidence that he served the tenant with the Application for Dispute Resolution and Notice of Hearing by posting it on the tenant's door on December 20, 2012.

I find the tenant was served in a manner complying with section 89 (2) of the Residential Tenancy Act (the "Act") and the hearing on the landlord's request for an order of possession only.

The landlord was provided the opportunity to present his evidence orally, to refer to 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

The landlord gave evidence that this tenancy began on June 1, 2011, monthly rent is \$1050.00, and a security deposit of \$525.00 was paid by the tenant at the beginning of the tenancy.

The landlord gave evidence that on December 5, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting it on the tenant's door, listing unpaid rent of \$1092.00 as of December 1, 2012. The effective vacancy date listed on the Notice was December 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.

The landlord stated that the tenant had not made any rent payments since the issuance of the Notice.

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 accept that service of the application for dispute resolution was delivered to the tenant in a manner consistent with Section 89 (2) (d) to allow the landlord an order of possession.

Therefore, I find that the landlord is entitled to an order of possession for the rental unit, which I am enclosing with the landlord's Decision. This order is a legally binding, final order, and may be filed in the Supreme Court of British Columbia for enforcement as an order of that court should the tenant fail to comply with this order of possession.

As to the landlord's request for a monetary order, Section 89(1) of the Residential Tenancy Act requires that an application for dispute resolution be served upon the respondent (the tenant) in person, by registered mail to the address at which the person resides, or if a tenant, by registered mail to the forwarding address provided by the tenant.

Therefore, I find the landlord failed to establish that tenant was served with the Notice of Hearing and Application for Dispute Resolution pursuant to Section 89 (1) when it was posted on the door. I therefore dismiss the portion of the landlord's application for a monetary order for unpaid rent, with leave to reapply.

As the landlord was successful in their application for an Order of Possession, I allow the landlord to withhold \$50.00 from the security deposit for recovery of the filing fee.

Conclusion

The landlord is granted an order of possession for the rental unit.

The portion of the landlord's application for a monetary order is dismissed with leave to re-apply.

The landlord may withhold \$50.00 from the tenant's security deposit for recovery of the filing fee.

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 18, 2013

