



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 was scheduled in response to the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / and recovery of the filing fee. The landlord's agent attended and gave affirmed testimony. Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation, or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from August 1, 2009 to July 31, 2010. Monthly rent of \$1,100.00 was due and payable in advance on the first day of each month, and a security deposit of \$550.00 was collected. Even while the tenancy agreement provides that the tenant must vacate the unit at the end of the fixed term, the parties agreed to continue the tenancy on a month-to-month basis. The amount of monthly rent has remained unchanged.

Arising from rent which remained overdue on January 11, 2013 for the months of November & December 2012, and January 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent dated January 11, 2013. The notice was served by way of posting on the unit door on that same date. A copy of the notice was submitted in evidence. Subsequently, the tenant has made no further payment toward rent and he continues to reside in the unit.

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated January 11, 2013. The tenant did not pay the outstanding rent within 5 days of receiving the notice, and did not apply to dispute the notice. The tenant 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. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

As for the monetary order, I find that the landlord has established a claim of **\$4,450.00**, which is comprised as follows:

\$4,400.00: 4 months' rent for November & December 2012, and January & February 2013 (4 x \$1,100.00)

\$50.00: filing fee

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, in part as follows:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Following from all the above, I order that the landlord retain the security deposit of **\$550.00**, and I grant the landlord a **monetary order** for the balance owed of **\$3,900.00** (\$4,450.00 - \$550.00).

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$3,900.00**. This order may be served on the tenant, 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 *Residential Tenancy Act*.

Dated: February 22, 2013

Residential Tenancy Branch

