



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The landlord and her witness appeared, they were affirmed into the hearing and proceeded to provide testimony. I had received enough evidence to make a decision on the landlord's application and was in the process of concluding the hearing when the tenant dialed into the telephone conference call hearing, 10 minutes after it began.

I affirmed the tenant into the hearing and he proceeded to provide testimony.

The 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.

Preliminary Issue-As noted the tenant dialed into the telephone conference call hearing 10 minutes late. He explained that he had dialed the number provided on time, but was not connected to the hearing.

At the 22 minute mark of the hearing, I could no longer hear the tenant speaking. The telephone system showed that the tenant was still present. I was unable to determine if the tenant could hear me; however, I did provide my concluding remarks as if he was still able to hear me.

I note that even though the tenant dialed into the hearing late and was not able to participate at the conclusion, the tenant provided a full accounting of his version of events. The tenant's participation in the conference had no impact on my decision, as will be fully explained.

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 month to month tenancy began on June 15, 2012, monthly rent is \$760.00, and a security deposit of \$380.00 was paid by the tenant at the beginning of the tenancy.

The rental unit is in the basement suite and the landlord occupies the upper suite.

The landlord gave evidence that on December 4, 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 \$760 as of December 1, 2012. The effective vacancy date listed on the Notice was December 14, 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 has not made any rent payments since receiving the Notice, has not vacated the rental unit, and as of the date of the hearing, the tenant owed \$2280.00 in unpaid rent.

The tenant acknowledged receiving the Notice and the application and hearing documents, that he did not file an application for dispute resolution and that he has not made any rent payments. The tenant said that he should not owe rent as the rental unit has become unliveable due to a flood and that the reason he stayed on was due to the fact he had no place else to move.

The tenant said that he had documents verifying that the rental unit was unlivable, but did not provide those documents.

In response, the landlord said she has been provided no information that the rental unit was unliveable, and contended that it was.

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.

Pursuant to section 67 of the Act, I also find that the landlord has established a total monetary claim of \$2330.00 comprised of outstanding rent of \$2280.00 through February, 2013, and the \$50.00 filing fee paid by the landlord for this application.

Although the landlord on her application for dispute resolution asked to retain the security deposit, she said in the hearing that she did not want to do so.

Conclusion

I grant the landlord a final, legally binding order of possession for the rental unit, 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. Costs of enforcement may be recoverable from the tenant.

I grant the landlord a final, legally binding monetary order for the amount of \$2330.00, 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. Costs of enforcement may be recoverable from the tenant.

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: February 07, 2013

Residential Tenancy Branch

