



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR

For the landlord: MNSD, OPR, MNR, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for an order seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

The landlord applied for authority to retain the tenant's security deposit, a monetary order for unpaid rent, an order of possession due to unpaid rent and for recovery of the filing fee.

The landlord appeared; the tenant did not appear.

The landlord submitted that he served the tenant with the landlord's Application for Dispute Resolution and Notice of Hearing by registered mail on January 30, 2013 and by leaving it with the tenant on January 30, 2013.

In addition to the tenant's own application for dispute resolution being scheduled for this time and date, I find the tenant was served notice of the hearing on the landlord's application for dispute resolution 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 relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Issue: As the tenant failed to appear in support of his application, I dismiss the tenant's application, without leave to reapply. The hearing proceeded only upon the landlord's application.

Preliminary Issue 2- The landlord said that the tenant vacated the rental unit on January 31, 2013, and as a result he no longer required an order of possession for the rental unit.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for authority to retain the tenant's security deposit and to recover the filing fee?

Background and Evidence

The landlord submitted that this tenancy began on December 23, 2005, the beginning monthly rent was \$675.00, the ending monthly rent was \$777.00, and a security deposit of \$337.50 was paid by the tenant at the beginning of the tenancy.

The landlord gave evidence that on January 6, 2013, 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 \$1674.00 as of January 1, 2013. The effective vacancy date listed on the Notice was January 16, 2013. Section 90 of the Act states that documents served in this manner are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on January 9, 2013, and the effective move out date is automatically changed to January 19, 2013.

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 tenant did make application to dispute the Notice; however due to the reason above, his application has now been dismissed, without leave to reapply.

The landlord stated that the tenant did not make any further rent payments and vacated on January 31, 2013. The landlord said he was not requesting loss of revenue for February 2013, and that his monetary claim remained at \$1674.00 for unpaid rent accumulated during the tenancy.

The landlord also requests recovery of the filing fee of \$50.00.

The landlord's relevant evidence included his accounting of rent payments, the tenancy agreement, a copy of the Notice, and registered mail receipts.

Analysis

Based on the relevant oral and written evidence submitted 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, that he owed the rent listed on the Notice as shown by the landlord's evidence, and did not pay the outstanding rent within five days of service.

Due to the reasons listed above, I find that the landlord has proven a total monetary claim of \$1724.00 comprised of outstanding rent of \$1674.00 through January 2013, and the \$50.00 filing fee paid by the landlord for this application.

At the landlord's request, I allow the landlord to retain the tenant's security deposit and interest of \$349.45 in partial satisfaction of the claim.

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$1374.55, 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 the Court. Costs of enforcement may be recoverable from the tenant.

Conclusion

The landlord's application is granted and he is granted a monetary order for \$1374.55.

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 08, 2013

Residential Tenancy Branch

