



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Neither party raised any issue regarding service of the evidence.

Thereafter all 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.

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 August 1, 2011, monthly rent is \$950.00, and a security deposit of \$450.00 was paid by the tenant at the beginning of the tenancy.

The landlord gave evidence that on January 2, 2013, he served the tenant 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 \$775.00 as of January 1, 2013. The effective vacancy date listed on the Notice was January 12, 2013.

Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on January 5, 2013, and the effective move out date is automatically changed to January 15, 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 landlord stated that the tenant paid \$200.00 for January 2013, and owed a balance of \$750.00 for that month. The landlord confirmed that he included a late fee of \$25.00 as part of unpaid rent listed on the Notice. The landlord also said that the tenant has not made a rent payment in February 2013.

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

The tenant acknowledged owing unpaid rent of \$750.00 for January and \$950.00 for February 2013; however, the tenant further stated that he has suffered employment loss and was in the process of talking to the job welfare office to assist him in finding work.

The tenant also said he would like to work with the landlord to arrange a payment schedule.

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 listed 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 \$1750.00 comprised of unpaid rent of \$750.00 for January, \$950.00 in rental unit for February 2013, and the \$50.00 filing fee paid by the landlord for this application.

I have not allowed the landlord a late fee of \$25.00 as that specific amount was not agreed upon in the tenancy agreement provided by the landlord. Additionally the landlord as inserted an invalid and unenforceable clause in the tenancy agreement regarding a late fee being charged against the security deposit.

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.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of their monetary award, in the amount of \$1750.00, 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: February 13, 2013

Residential Tenancy Branch

