



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that she served the Tenant with copies of her application for dispute resolution and the hearing documents in person at the rental unit around noon on January 24, 2013. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding, in accordance with the Act, and I continued in the Tenant's absence.

Issue(s) to be Decided

1. Should the Landlord be issued an Order of Possession?
2. Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: a tenant payment ledger, notes written to the Tenant from the Landlord on January 11, 2013 and February 3, 2013; and three 10 Day Notices dated November 24, 2012, September 2, 2012, and January 6, 2013. She confirmed that she had not served the Tenant with her evidence package; however, she did serve him a copy of the 10 Day Notice.

The Landlord advised she entered into a verbal tenancy agreement with the Tenant that began on November 1, 2011. Rent was initially payable in the amount of \$575.00 and was reduced to \$550.00 effective January 1, 2012. The Landlord prefers to have rent paid by the last day of each month. The Tenant paid \$275.00 on November 1, 2011, as the security deposit.

The Landlord stated that the Tenant is constantly late in paying his rent. She has issued numerous 10 Day eviction notices with the most recent one being posted to his door on January 6, 2013.

At the time the January 2013 Notice was issued the Tenant had an accumulated balance owing of \$800.00. The Tenant made payments of \$225.00 on January 12, 2012 and \$100.00 on January 21, 2013 leaving an unpaid balance due of \$475.00. The Landlord confirmed the Tenant is still occupying the rental unit and has not paid anything towards February rent.

Analysis

The Landlord confirmed she did not serve the Tenant with copies of her evidence which I find to be a contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as Tenant has been served copies of the Landlord's evidence I find that the Landlord's evidence cannot be considered in my decision. I did however consider the Landlord's testimony and the January 6, 2013 Notice which was served upon the Tenant.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on January 09, 2013, three days after it was posted to the door, and the effective date of the Notice is January 19, 2013. The Tenant neither paid the rent nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **January 19, 2013**, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$475.00 that that was due on December 31, 2012, for January 2013, in accordance with section 26 of the *Act* which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I award the Landlord unpaid rent in the amount of **\$475.00**.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

The Landlord is at liberty to file another application to claim for any additional losses.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days after service upon the Tenant**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$525.00** (\$475.00 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia 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 19, 2013

Residential Tenancy Branch

