



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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, damage to the rental unit, and money owed or compensation for damage or loss, for authority to retain the tenant's security deposit and to recover the filing fee.

The landlord appeared; the tenant did not appear.

The landlord gave evidence that he served the tenant with the amended Application for Dispute Resolution and Notice of Hearing by registered mail on March 7, 2013. The landlord supplied the cash register receipt and customer receipt showing the tracking number of the registered mail.

I find the tenant was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy 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 before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

As a preliminary issue, I have determined that the portion of the landlord's application dealing with a request for a monetary order for damage and plumbing costs are unrelated to the primary issues of enforcing the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") and unpaid rent. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the landlord's Application and dismissed that portion of the landlord's request for compensation for damage and plumbing costs, **with leave to reapply**.

The hearing proceeded only upon the landlord's application seeking an order of possession for the rental unit, a monetary order for unpaid rent, and for authority to retain the tenant's security deposit.

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, for authority to retain the tenant's security deposit, and to recover the filing fee?

Background and Evidence

The landlord gave oral evidence that this tenancy began on August 12, 2012, monthly rent is \$875.00, and a security deposit of \$437.50 was paid by the tenant at the beginning of the tenancy.

The landlord gave evidence that on February 18, 2013, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent, by posting it on the tenant's door, listing unpaid rent of \$437.50 as of February 1, 2013. The effective vacancy date listed on the Notice was February 28, 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 February 21, 2013, and the effective move out date is automatically changed to March 3, 2013, pursuant to section 53 of the Act.

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 made a payment of \$437.50 on March 1, 2013, and as of the date of the hearing, the tenant owed a total of \$875.00 in unpaid rent through March 2013.

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

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 on the Notice 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 \$925.00 comprised of outstanding unpaid rent of \$875.00 through March, 2013, and the \$50.00 filing fee paid by the landlord for this application.

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 such enforcement may be recoverable from the tenant.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of \$437.50 in partial satisfaction of the claim.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$487.50, 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 such 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: March 22, 2013

Residential Tenancy Branch

