



Dispute Resolution Services

Page: 1

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 landlord appeared; the tenant did not appear.

The landlord gave evidence that he served the tenant with the Application for Dispute Resolution and Notice of Hearing by leaving it with the tenant on February 20, 2013.

I find the tenant was served notice of this hearing 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.

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.

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 September 1, 2012, monthly rent listed on the tenancy agreement is \$905.00, and a security deposit of \$452.50 was paid by the tenant at the beginning of the tenancy.

The landlord gave evidence that on February 2, 2013, 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 \$962.70 as of February 1, 2013. The effective vacancy date listed on the Notice was February 12, 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's documentary evidence revealed that the tenant has made multiple late payments of rent; however the evidence also shows that the landlord has increased the tenant's rent on his own by \$20.00 per month.

I asked the landlord about this increase, and he said that another occupant has now moved into the rental unit and was entitled to raise the rent unilaterally.

The landlord also confirmed that included in the present claim for unpaid rent as well as the unpaid rent listed on past 10 Day Notices to End Tenancy for Unpaid Rent was a pet damage deposit of \$452.50.

I asked the landlord if he could provide specific payments of rent paid by the tenant as well as the dates of those payments since the beginning of the tenancy and the landlord asked his wife to join the telephone conference call hearing. The landlord's wife confirmed that she kept the financial records.

I again repeated my request for specific payments and dates since the beginning of the tenancy, and the landlord's wife could only read from the past 10 Day Notices issued to the tenant. The wife confirmed that she could not provide a tenant ledger sheet with payment records and dates.

The landlord's application said that the tenant paid rent of \$905.00 on February 13, 2013.

The landlord stated that the tenant did not pay rent for 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 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.

As to the landlord's monetary claim for unpaid rent, I find the landlord submitted insufficient evidence to prove the amount of unpaid rent. The landlord may not increase the rent listed in the tenancy agreement on his own accord and may not include a claim for a pet damage deposit in unpaid rent. The landlord confirmed that the amounts of rent listed in the 10 Day Notices included such amounts.

Although I accept that some rent was owed when the Notice was issued, which is the reason I granted an order of possession for the rental unit, I am not convinced the amount listed as unpaid rent was the correct amount for which the tenant was obligated under the tenancy agreement.

I therefore dismiss the landlord's claim for unpaid rent through February 2013, without leave to reapply.

The landlord is at liberty to make a claim for unpaid rent for March 2013, as this amount was not listed on his application for dispute resolution.

As the landlord was partially successful with his application for dispute resolution, I allow the landlord recovery of the filing fee of \$50.00.

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.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the filing fee, in the amount of \$50.00, 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 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 13, 2013

Residential Tenancy Branch

