



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.

At the beginning of the hearing, the tenant requested an adjournment of the hearing due to not receiving the landlord's application package and notice of the hearing until the weekend before the hearing. I questioned the landlord about the delivery of his application package and the landlord replied that he served the tenant via registered mail on February 22, 2013. The landlord said that he researched the delivery of the documents and discovered that the tenant failed to claim his registered mail envelope.

The landlord said that he also served the tenant a courtesy copy of his application package and notice of hearing on March 9, 2013.

I find the tenant was served with the notice of this hearing and the landlord's application in a manner consistent with section 89 of the Act; I therefore have declined the tenant's request for an adjournment and the hearing proceeded.

The tenant did not raise an objection about the delivery of the landlord's evidence.

Thereafter both parties were provided the opportunity to present their 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

Neither party was certain of the start date of the tenancy; however, the tenant said he moved in 2 years ago.

I was provided undisputed evidence that monthly rent is \$780.00 and the tenant paid a security deposit of \$390.00.

The landlord gave evidence that on February 11, 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 \$780.00 as of February 1, 2013. The effective vacancy date listed on the Notice was February 21, 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 14, 2013, and the effective move out date is automatically changed to February 24, 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 has not made a payment since issuance of the Notice, although the tenant attempted to pay a portion of the rent on February 23, 2013. According to the landlord, the tenant now owes rent of \$780.00 for March 2013, in addition to unpaid rent for February.

The landlord also mentioned that he incorrectly asked for a NSF charge on his application; however the tenant failed to pay rent so there was not a NSF charge.

The tenant confirmed that he did not dispute the Notice; however the tenant said he attempted to make a partial payment and it was refused. The tenant also mentioned that he could pay all rent due now.

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.

I also find that the landlord has established a total monetary claim of \$1610.00 comprised of unpaid rent of \$780.00 for February and March, 2013, each, 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.

I grant the landlord a final, legally binding monetary order in the amount of his monetary award pursuant to section 67 of the Act, \$1610.00, 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 19, 2013

Residential Tenancy Branch

