



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, OPB, MNR, MNSD, FF

Introduction

This hearing concerns the landlord's application for an order of possession / a monetary order as compensation for unpaid rent and utilities / retention of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Preliminary Matters

Service

While the tenant attended, he testified that he had not received the landlord's application for dispute resolution and notice of hearing (the "hearing package"), and that he confirmed the time and date of the hearing from a telephone call he made to the Residential Tenancy Branch.

The landlord testified that she served the hearing package by way of registered mail. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs, in part: i) that the registered mail was "accepted at the Post Office on March 18, 2013, and ii) "Attempted delivery. Notice card left indicating where item can be picked up" on March 19, 2013.

Section 90 of the Act, which speaks to **When documents are considered to have been received**, provides that a document served by mail is "deemed to be received" on "the 5th day after it is mailed." Accordingly, even while the tenant may not have picked up the hearing package from the Post Office, I find that the landlord's service of the hearing package complies with the relevant statutory provisions.

Style of Cause

The tenant drew attention to the style of cause used for the tenant by the landlord on

the application for dispute resolution, noting that it is not identical to the way in which the tenant is named on the tenancy agreement.

Following from this I note that the tenancy agreement identifies the tenant as a company, as well as the adult tenant and his two children under the age of 19 years. Further, I note that the 10 day notice to end tenancy for unpaid rent dated October 10, 2012 issued by the landlord, identifies the tenant by way of the company name in addition to the adult tenant's personal name. Accordingly, the style of cause for the tenant in this dispute has been amended from the original application to show the company name and the adult tenant's personal name.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on August 16, 2012. Monthly rent of \$1,600.00 is due and payable in advance on the first day of each month, and a security deposit of \$800.00 was collected. The agreement provides that the electricity / heat utilities and long distance telephone costs are not included in the rent.

Arising from rent which remained unpaid when due on October 1, 2012, the landlord issued a 10 day notice to end tenancy for unpaid rent dated October 10, 2012. The notice was served by way of posting on the tenant's door on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is October 23, 2012. Subsequently, the tenant has made no further payment toward rent and he continues to reside in the unit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated October 10, 2012. The tenant did not pay the outstanding rent within 5 days of receiving the notice, and did not apply to dispute the notice. The tenant 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. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

As for the monetary order, during the hearing the tenant testified that he does not dispute the amount(s) of compensation claimed by the landlord. Accordingly, I find that the landlord has established a claim of **\$13,654.33** as follows:

\$11,200.00: (7 x \$1,600.00) *unpaid rent for the 7 month period October / November / December 2012 & January / February / March / April 2013.*

\$134.40: *long distance telephone charges.*

\$2,219.93: *hydro utility.*

\$100.00: *filing fee.*

I order that the landlord retain the security deposit of **\$800.00**, and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$12,854.33** (\$13,654.33 - \$800.00).

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$12,854.33**. Should it be necessary, this order may be served on the tenant, filed in the 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: April 03, 2013

Residential Tenancy Branch

