



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was personally served with the application for dispute resolution and notice of hearing on June 5, 2013 in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

The tenancy began on April 1, 2011. Rent of \$855.00 is payable monthly on the first day of each month. At the outset of the tenancy, the Landlord collected \$500.00 as a security deposit from the Tenant. The Tenant paid \$391.00 towards rent for May 2013 and on May 15, 2013 the Landlord personally served the Tenant’s adult brother, who

apparently resides with the Tenant, with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The Tenant has not made an application for dispute resolution and has not moved out of the unit. The Landlord claims the security deposit and states that damages exist in the unit and rent is still unpaid.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Based on the Landlord's evidence I find that the Tenant was served with a valid Notice. The Tenant has not filed an application to dispute the Notice and has not paid the outstanding rent. Given this fact, I find that the Landlord is entitled to an **Order of Possession**.

As the Landlord did not include a claim for unpaid rent or damages to the unit on its application, I note that the Landlord is still at liberty to make these claims. As the tenancy has not yet ended, I find that the claim for the security deposit is premature and I dismiss this claim with leave to reapply.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. 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.

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: July 03, 2013

Residential Tenancy Branch

