



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbian Centennial Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, 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, 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, by way of a registered mail containing a tracking number, they served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on July 12, 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, 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.

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 October 1, 2008, the current monthly rent contribution by the tenant is \$466, and a security deposit of \$300 was paid by the tenant at the beginning of the tenancy.

The landlord gave evidence that on June 25, 2013, he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by leaving it at the tenant's residence with an adult who apparently resides with the tenant, listing unpaid rent of \$1292 as of June 1, 2013. The effective vacancy date listed on the Notice was July 4, 2013.

In response to my question, the landlord explained that he handed the Notice to the tenant's adult sister, who informed the landlord that she was staying there at that time.

As to the effective date listed on the Notice, a 10 Day Notice to end the tenancy is not effective earlier than the expiration of the 10 days from the date of service. In this case, 10 days following service on June 25, is July 5. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to July 5, 2013.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that there were payments made by or on behalf of the tenant since the issuance of the Notice, but well after the 5 days allowed to the tenant had expired. The landlord said that the tenant's rent payments were \$551 on July 23, 2013, and \$551, made on August 1. The landlord submitted that the tenant was issued receipts for a use and occupancy basis and as of the date of the hearing, the tenant owed \$1122 in unpaid rent.

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 file an application for dispute resolution in dispute of 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 is entitled to a total monetary award of \$1172 comprised of outstanding rent of \$1122 through August, 2013, and the \$50 filing fee paid by the landlord for this application.

Conclusion

The landlord's application has been granted.

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 after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

At the landlord's request, I allow the landlord to retain the tenant's security deposit and interest of \$301.13 in partial satisfaction of their monetary award.

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 \$870.87, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are 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: August 14, 2013

Residential Tenancy Branch

