



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 dealt with an Application for Dispute Resolution filed on October 1, 2013, by the Landlord to obtain an Order of Possession and a Monetary Order for: unpaid rent and utilities; to keep the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that he personally served the Tenant with copies of his application for dispute resolution and notice of hearing documents on October 3, 2013, in the presence of a witness. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding and I continued in the absence of the Tenant.

Issue(s) to be Decided

- 1) Is the Landlord entitled to an Order of Possession?
- 2) Has the Landlord met the burden of proof to establish a monetary claim?

Background and Evidence

The Landlord testified that when his previous tenant was sent off to jail this Tenant was already occupying the unit. As the original tenant was no longer residing in the unit the Landlord entered into a verbal tenancy agreement with this Tenant which began in approximately June 2010. Rent is payable on the first of each month in the amount of \$850.00 plus utilities. This Tenant did not pay a security deposit.

The Landlord stated that rent has been paid late on a regular basis but then the Tenant just stopped paying altogether. He served the Tenant a 10 Day eviction notice, in person, on September 20, 2013, but the Tenant continues to stay in the unit and has not paid any rent. He filed his claim seeking four month's rent (July, August, September, and October) at \$850.00 each month plus \$520.00 for utilities for a total of \$3,920.00. During the hearing the Landlord indicated that rent was not paid since March. He confirmed that he did not serve evidence to support the claims for unpaid rent or utilities.

Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant was served the 10 Day Notice on September 20, 2013 and the effective date of the Notice is September 30, 2013. The Tenant neither paid the rent nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **September 30, 2013**, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord’s request for an Order of Possession.

In the absence of documentary evidence, such as a tenant payment ledger or copies of utility bills, I find there to be insufficient evidence to prove the exact amount owing to the Landlord. Therefore, I dismiss the Landlord’s monetary claim, with leave to reapply.

The Landlord has been partially successful with their application; therefore I award recovery of the **\$25.00** filing fee

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days after service upon the Tenant**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$25.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia 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: November 12, 2013

Residential Tenancy Branch

