



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

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 to recover the filing fee.

The landlord appeared; the tenant did not appear.

The landlord gave evidence that he served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on October 24, 2013. The landlord supplied testimony of the tracking number of the registered mail.

I accepted the landlord's evidence that 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 Dispute Resolution 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 tenancy agreement supplied by the landlord shows that this tenancy began on May 1, 2012, monthly rent is \$830, and a security deposit of \$415 was paid by the tenant on April 26, 2012.

The landlord gave evidence that on October 2, 2013, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by attaching it to the tenant's door, listing unpaid rent of \$830 as of October 1, 2013. The effective vacancy date listed on the Notice was October 15, 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 the tenant made a payment of \$545.43 on October 23, 2013, and as of the date of the hearing, the tenant owed \$1164.57 in unpaid rent.

I have no evidence before me that the tenant applied to dispute the Notice.

Analysis

Based on the landlord's 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 monetary award of \$1214.57 comprised of outstanding rent of \$1164.57 through November, 2013, and the \$50 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 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 of \$415 in partial satisfaction of the 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 \$799.57, 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: November 29, 2013

Residential Tenancy Branch

