



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR OPC MNR MNDC FF
MNDC ERP RP RR FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on October 29, 2013, seeking an Order of Possession for unpaid rent and for Cause; a Monetary Order for unpaid rent and 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 Tenant filed seeking monetary order, Orders to have the Landlord make repairs and emergency repairs, allow the Tenant reduced rent for services and facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord for this application.

The Landlord submitted documentary evidence which indicates the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on October 29, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant is deemed served notice of this proceeding on November 3, 2013, five days after it was mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Tenant's absence.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

No one appeared on behalf of the Tenant despite the Tenant being served with notice of the Landlord's application in accordance with the Act and despite having his own application for dispute resolution scheduled for the same hearing date and time.

Issue(s) to be Decided

- 1) Is the Landlord entitled to an Order of Possession under section 55 of the *Residential Tenancy Act*?
- 2) Is the Landlord entitled to a Monetary Order under section 67 of the *Residential Tenancy Act*?
- 3) Should the Tenant's application be dismissed with or without leave to reapply?

Background and Evidence

The Landlord confirmed that his evidence included a copy of the tenancy agreement which the Tenant entered into for a month to month tenancy which began on August 17, 2009. Rent is payable on the first of each month in the amount of \$850.00 and on August 17, 2009 the Tenant paid \$425.00 as the security deposit.

The Landlord testified that when the Tenant failed to pay him September and October 2013 rent he posted a 10 Day eviction Notice to the Tenant's door on October 16, 2013. The Tenant remains in the rental unit and has not paid any rent for the past four months.

The Landlord stated that the Tenant's female friend called him and said that the Tenant is not working right now and he will be moving out in the next two weeks. The Landlord wished to proceed with his application for the Order of Possession for unpaid rent and the monetary order.

Analysis

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 is deemed to have received the 10 Day Notice on October 19, 2013, three days after it was posted to his door, and the effective date of the Notice is **October 29, 2013**, in accordance with section 90 of the Act.

The Tenant did not pay the rent and did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice 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.

The Landlord claimed unpaid rent of \$1,700.00 which was due September 1, 2013 and October 1, 2013 (2 x \$850.00). The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the *Act*. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$1,700.00**.

As noted above this tenancy ended **October 29, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for November and December 2013, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and then will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire months of November and December 2013, in the amount of (2 x \$850.00) **\$1,700.00**.

The tenancy has ended in accordance with the 10 Day Notice and I did not hear testimony about an eviction notice issued for cause. Accordingly, I dismiss the request for an Order of Possession for cause.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of their application and the application is dismissed, without leave to reapply.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$3,450.00** (\$1,700.00 + \$1,700.00 + \$50.00). 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.

The Tenant's application is HEREBY DISMISSED, without leave to reapply.

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: December 06, 2013

Residential Tenancy Branch

