



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Landmark Realty Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR,

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 and a monetary order for unpaid rent.

The landlord's agent (hereafter "landlord") attended the telephone conference call hearing; the tenant did not attend.

The landlord gave affirmed testimony that he served the tenant with their Application for Dispute Resolution and Notice of Hearing by attaching it to the tenant's door on November 2, 2013.

Based upon the submissions of the landlord, I find the tenant was served notice of this hearing in a manner complying with section 89(2) 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 and a monetary order for unpaid rent?

Background and Evidence

The landlord did not supply a copy of the tenancy agreement, but testified that this tenancy began on April 1, 2012, monthly rent is \$900, and a security deposit of \$450 was paid by the tenant at the beginning of the tenancy.

The landlord testified that on October 21, 2013, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by leaving it with the tenant, listing unpaid rent of \$1260 as of October 1, 2013. The effective vacancy date listed on the Notice was October 31, 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, although still living in the rental unit, has not made any further payments of rent and currently owes \$3060 in unpaid rent through December. The landlord also said that the tenant owed \$30 for lawn care.

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.

As to the landlord's request for a monetary order, Section 89(1) of the Residential Tenancy Act requires that an application for dispute resolution be served upon the respondent (the tenant in this case) in person, by registered mail to the address at which the person resides, or if a tenant, by registered mail to the forwarding address provided by the tenant.

Although the landlord served the tenant according to Section 89(2) of the Act in order to obtain an order of possession for the rental unit, I find the landlord failed to serve the tenant in a manner as required under Section 89(1), as noted above, and I therefore dismiss the portion of the landlord's application seeking monetary compensation, with leave to reapply.

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.

The portion of the landlord's application seeking monetary compensation is dismissed, with 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* and is being mailed to both the applicant and the respondent.

Dated: December 11, 2013

Residential Tenancy Branch

