



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRIGHTON APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes, CNR, OPR, MNR, MNSD

Introduction

The tenant filed an Application for Dispute Resolution pursuant to the *Residential Tenancy Act*, S.B.C. 2002, c. 78, seeking an order cancelling a 10 day Notice to End Tenancy (for unpaid rent or utilities). The hearing was scheduled to be heard by telephone conference, with specific details and instructions about the time and date, phone numbers, passcode, and other procedures, given on the "Notice of a Dispute Resolution Hearing". The tenant failed to join the conference call hearing. In the absence of any submissions or testimony at the hearing from the tenant upon which to make a decision, and as the landlord attended, I have dismissed the tenant's application, with no liberty to reapply being granted.

The landlord also applied for dispute resolution, seeking an Order of Possession, a Monetary Order; and an order to retain the security deposit. The landlord's representative attended the hearing.

Issues to Be Decided

- Has the tenant been properly served with the landlord's application?
- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order?
- Is the landlord entitled to an order permitting retention of the security deposit?

Background and Evidence

This tenancy began September 1, 2013. Rent is due on the 1st day of each month in the amount of \$720.00. The tenant paid rent sporadically, and as of April 18, 2014 owed \$3,000.00, as reflected on the 10 day notice that the landlord posted on the tenant's door. The tenant paid a further \$610.00 on April 29, 2014, but has paid no further rent and remains in possession.

As noted above, the tenant did not attend the hearing, and the tenant's claim disputing the notice is dismissed.

The notice of the landlord's claim was posted upon the tenant's door, and never served personally or by registered mail.

Analysis

Pursuant to Sections 88 and 89 of the Residential Tenancy Act, the service upon the tenant of the notice of this hearing by way of posting was effective for the purposes of the application for an Order of Possession, but not for the monetary portions of the application. Accordingly, the landlord's application for a monetary order is dismissed with liberty to reapply, for want of proper service for that portion of the landlord's claim.

In the absence of the full required payment within the 5 day period set out in the Notice, and as the tenant's dispute of the notice is dismissed, the tenant is conclusively presumed to have accepted the end of the tenancy agreement on the effective date of the Notice, by virtue of section 46(5)(a) of the Residential Tenancy Act. The landlord has established a right to possession, and is entitled to an Order of Possession.

Conclusion

An Order of Possession is issued to the Landlord, effective within 48 hours of service upon the tenant. Should the tenant be served with this Order, but fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord's monetary claim and claim regarding the deposit are dismissed, with liberty 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: June 03, 2014

Residential Tenancy Branch