



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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, for authority to retain the tenant's security deposit, and for recovery of the filing fee paid for this application.

The landlord attended; the tenant did not attend the telephone conference call hearing.

The landlord provided documentary evidence containing the receipt and tracking number showing that he served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on May 16, 2014. The landlord stated that the registered mail envelope was returned to him, marked "refused."

Based upon the submissions of the landlord, I find the tenant was served notice of this hearing in a manner complying with section 89(1) of the Residential Tenancy 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, monetary compensation and to recover the filing fee?

Background and Evidence

The landlord gave evidence that this tenancy began in September, 2013, monthly rent is \$1650, and a security deposit of \$825 was paid by the tenant at the beginning of the tenancy.

The landlord confirmed that there was not a written tenancy agreement.

The landlord gave evidence that on May 7, 2014, he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), by leaving it with the tenant, listing unpaid rent of \$3100 as of May 1, 2014. The effective vacancy date listed on the Notice was May 17, 2014.

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 several payments towards the rent deficiency, those being \$1200 on May 30, \$800 on June 2, \$600 on June 10, and \$500 on June 16, 2014. As of the date of the hearing, the tenant owed a total rent deficiency \$1650, as he paid the monthly rent for July.

The landlord submitted that when the tenant made the rent payments, the receipt listed that the acceptance of the funds was on a use and occupancy only basis.

The landlord also submitted that the tenant has not paid utilities since the beginning of the tenancy, and owes \$1094.99 through May 1, 2014, as listed on the Notice.

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

Analysis

Based on the landlord's undisputed evidence, I find the landlord submitted sufficient evidence to prove that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, 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 further find that the landlord submitted sufficient evidence that the tenant owes a total rent deficiency of \$1650, and the landlord is entitled to a monetary award in that amount.

As to the landlord's request for unpaid utilities, section 46(6) of the Act allows a landlord to issue the tenant the Notice if the tenancy agreement requires the tenant to pay utility charges to the landlord, and the tenant has not paid those outstanding utilities after a written demand.

In the case before me, there was no written tenancy agreement and I therefore find the landlord submitted insufficient evidence that the tenant owed utilities to the landlord, as that term is not clearly set out in a written tenancy agreement.

I therefore dismiss the landlord's claim for unpaid utilities.

Due to the above, I find that the landlord is entitled to a monetary award of \$1700 comprised of outstanding rent of \$1650 through the date of the hearing, and the \$50 filing fee paid by the landlord for this application.

Conclusion

The landlord's application has been partially granted.

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 landlord has been granted a monetary award in the amount of \$1700.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of \$825 in partial satisfaction of his 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 \$875, 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: July 4, 2014

Residential Tenancy Branch

