



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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

The landlord gave evidence that they served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on September 6, 2014, and with their amended application by registered mail on October 8, 2014. The evidence was a copy of the registered mail envelopes with tracking numbers and tenant's address.

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 Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present her 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 on June 1, 2012, current monthly rent is \$746, and a security deposit of \$360 was paid by the tenant at the beginning of the tenancy.

The landlord submitted that on August 6, 2014, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by placing the document through the tenant's mail slot on his front door, listing a rent deficiency of \$855 as of August, 2014. The effective vacancy date listed on the Notice was August 16, 2014.

Section 90 of the Act states that documents served by leaving them in the mail slot are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on August 9, 2014, and the effective move out date is automatically changed to August 19, 2014, pursuant to section 53 of the Act.

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 submitted that the listed rent deficiency was for unpaid rent from October 2013, or \$730, and for late fees and NSF fees. In response to my question, the landlord submitted that they did not attempt to collect the rent deficiency for October 2013, earlier, as the tenant had made numerous promises to pay by a payment plan. Despite the promises, the tenant failed to pay or make any payments, according to the landlord. The landlord also submitted that the tenant has been issued rent receipts since the rent deficiency accumulated for a use and occupancy only basis.

The landlord's monetary claim listed in their amended application is \$980, comprised of a rent deficiency of \$730 for October 2013, \$200 for late fees and NSF fees, and the filing fee of \$50.

The landlord's relevant documentary evidence included, but was not limited to, the written tenancy agreement, the Notice, a tenant ledger sheet, and notices of a rent increase.

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

Analysis

Based on the oral and written 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, 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 \$980, comprised of outstanding rent of \$730 through October, 2014, \$200 in late and NSF fees, and the \$50 filing fee paid by the landlord for this application.

Conclusion

The landlord's application has been 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.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of \$360 in partial satisfaction of their monetary award of \$980. 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 \$620, which is 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*.

Dated: October 28, 2014

Residential Tenancy Branch

