



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPB MNR MNSD MNDC FF MT

Introduction

This hearing dealt with applications by the landlord and the tenant. The landlord applied for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant applied for an extension of time to make an application to cancel a notice to end tenancy.

This matter was set for hearing by telephone conference call at 2:30 p.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenant did not attend the hearing by 2:40 p.m., and the landlord appeared and was ready to proceed, I dismiss the tenant's claim without leave to reapply.

The landlord stated that he served the tenant with the application for dispute resolution and notice of hearing by registered mail sent on December 3, 2014. Section 90 of the Act states that a document is deemed to have been served five days after mailing. I found that the tenant was deemed served with notice of the hearing on December 8, 2014, and I proceeded with the hearing in the absence of the tenant.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

The tenant began occupying the rental unit on March 1, 2103. Rent in the amount of \$850 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$425. The

tenant failed to pay \$60 of the rent for October 2014 and paid no rent for November 2014, and on November 18, 2014 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the month of December 2014.

The Landlord's evidence included the following:

- a copy of the latest residential tenancy agreement, signed by the tenant and the landlord on August 1, 2104, indicating a monthly rent of \$850 due on the first of each month and confirming that the tenant paid a security deposit of \$425 in March 2013;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on November 18, 2014, with an effective vacancy date of November 29, 2014, for failure to pay rent in the amount of \$910 that was due on November 1, 2014; and
- a copy of the Landlord's Application for Dispute Resolution, filed November 25, 2014.

Analysis

I am satisfied that the tenant was served with the notice to end tenancy, as the tenant applied to cancel the notice and indicated in their application that they received the notice on November 18, 2014.

I accept the evidence before me that the tenant has failed to pay the rent owed within the five days granted under section 46(4) of the Act. I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. The landlord is therefore entitled to an order of possession.

As for the monetary order, based on the above-noted evidence I find that the landlord has established a claim for \$1760 in unpaid rent. The landlord is also entitled to recovery of the \$50 filing fee for the cost of his application.

Conclusion

I grant the landlord an order of possession effective two days from service. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord is entitled to \$1810. I order that the landlord retain the security deposit of \$425 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1385. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 23, 2014

Residential Tenancy Branch

