



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR CNR MNR MNSD MNDC FF

Introduction

This hearing dealt with applications by the landlord and the tenant. The landlord applied for an order of possession and a monetary order for unpaid rent.

The landlord participated in the teleconference hearing, but the tenant did attend.

This matter was set for hearing in person at the Victoria Residential Tenancy Branch office commencing at 1:00 p.m. on December 22, 2014. The hearing concluded at 1:20 p.m. and the tenant did not appear in that time. Therefore, as the tenant did not attend the hearing and the landlord appeared and was ready to proceed, I dismiss the tenant's claim without leave to reapply.

The landlord submitted evidence that they served the tenant with their application for dispute resolution and notice of hearing by registered mail sent on November 29, 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 4, 2014, and I proceeded with the landlord's application 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 tenancy began on August 1, 2014. Rent in the amount of \$2500 is payable in advance on the first day of each month. The tenant failed to pay \$900 of the rent in the month of November 2014 and on November 19, 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 a residential tenancy agreement, signed by the tenant and the landlord on July 10, 2013;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on November 19, 2014, with an effective vacancy date of November 29, 2014, for failure to pay rent in the amount of \$900 that was due on November 1, 2014;
- testimony and a copy of a Proof of Service of Notice to End Tenancy establishing that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by attaching the notice on the rental unit door on November 19, 2014; and
- a copy of the Landlord's Application for Dispute Resolution, filed November 28, 2014.

Analysis

I have reviewed all evidence and I accept that the tenant was served with the notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on November 22, 2014, and on November 25, 2014 the tenant applied to cancel the notice.

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 \$3400 in unpaid rent. The landlord is also entitled to recovery of the \$50 filing fee.

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.

I grant the landlord an order under section 67 for the balance due of \$3450. This order may be filed in the Small Claims Court and enforced as an order of that Court.

If the landlord retains the security deposit, it must be dealt with in accordance with the Act. Under section 72 of the Act, the landlord may apply the amount of any security deposit toward the monetary order granted herein.

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 22, 2014

Residential Tenancy Branch

