



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"). The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss and 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 gave evidence that he served the tenant with his application for dispute resolution and notice of hearing by registered mail on January 29, 2015. The landlord supplied the registered mail receipt showing the tracking number and the tracking history for the registered mail.

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 their 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 recovery of the filing fee paid for this application?

Background and Evidence

The landlord provided a written tenancy agreement showing that this tenancy began on August 1, 2014, monthly rent is \$780, and a security deposit of \$390 was paid by the tenant at the beginning of the tenancy on August 1, 2014.

The landlord gave evidence that on January 6, 2015, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by attaching it to the tenant's door, listing unpaid rent of \$800 as of January 1, 2015. The landlord explained that \$20 of the listed amount included a \$20 late fee.

The effective vacancy date was not listed on the Notice as required; however, section 68 of the Act allows a notice to end the tenancy to be amended if the person receiving the notice knew, or should have known, the information that was omitted from the notice. In this case, I concluded that the tenant, based upon other language in the Notice, would have known that the effective move-out date was 10 days within receipt of the Notice. I therefore have amended the Notice to show an effective move-out date of January 19, 2015, to allow for the 3 days granted for documents to be deemed served if by attaching to the door.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within 5 days. The Notice also explained that alternatively the tenant had 5 days to dispute the Notice by making an application for dispute resolution.

The landlord submitted that the tenant has not made any rent payments since the Notice was issued, and as of the date of the hearing, the tenant owed \$1600 in unpaid rent, which included \$40 for late fees in January and February 2015.

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

Analysis

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 5 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 2 days after service of the order upon the tenant.

I therefore 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.

I also find that the landlord is entitled to a monetary award of \$1650, comprised of outstanding rent of \$780 through January, 2015, loss of rent revenue for February 2015 for \$780, as the tenant is now overholding in the rental unit after the effective end of tenancy, \$40 in late fees for January and February, or \$20 each, and the \$50 filing fee paid by the landlord for this application.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1650, 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.

Conclusion

The landlord's application has been granted.

The landlord is granted an order of possession for the rental unit.

The landlord is granted a monetary order for \$1650.

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: February 11, 2015

Residential Tenancy Branch

