



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the landlord's application for dispute resolution filed under the Residential Tenancy Act (the "Act"). The landlord applied for an order of possession for the rental unit due to unpaid rent, and for a monetary order for unpaid rent.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure (the "Rules") states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified that they had originally applied through the direct request process and their application was adjourned to a participatory hearing due a mathematical error. The landlord stated that they followed the order in the interim decision, in issued on March 5, 2015, by the adjudicator.

The interim decision reads in part,

"I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing before an Arbitrator appointed under the *Act* is required in order to determine the details of the landlord's application. **Notices of Reconvened Hearing are enclosed with this interim decision for the applicant to serve, with all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the *Act*."**

[Reproduced as written]

The landlord testified that they served their documents and the Notice of Reconvened Hearing for today's hearing, on the tenant, in person, on March 23, 2015, which was

witnessed. The landlord stated that the tenant further acknowledged receipt by signing the paper they provided.

I find that the tenant has been duly served in accordance with the Act and the interim decision issued on March 5, 2015.

Preliminary matters

At the outset of the hearing the landlord requested to amend their application to include subsequent unpaid rent as the tenant had not paid any rent since their application for dispute resolution was filed. As rent is the most basic term of a tenancy agreement, I find, pursuant to section 62(3) that the landlord's application is amended to include a claim for unpaid rent up to and including April 2015, as rent is due under the tenancy agreement.

Issues to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent?
Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord testified that the tenancy began on August 15, 2009. Rent in the amount of \$800.00 was due on the first of each month. A security deposit of \$400.00 was paid by the tenant.

The landlord testified that although they are entitled to collect the full amount of rent under the tenancy agreement. They are only seeking to recover \$400.00 per month as they made a verbal agreement with the tenant to reduce the rent when the co-tenant moved out.

The landlord testified that they have been very fair to the tenant; however, the tenant is not paying rent. The landlord stated that on December 18, 2014, they served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by personal service, which the tenant acknowledged receiving by signing the proof of service. The Notice indicates the tenant owed rent in the amount of \$4,230.00 as of December 1, 2014. The effective vacancy date listed on the Notice was December 28, 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 testified that the tenant did not dispute the Notice and did not pay the outstanding rent. The landlord stated that the tenant has not paid any subsequent rent for January 2015, February 2015, March 2015 and April 2015, and as of today's date owes the amount of \$5,830.00 in unpaid rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

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 (2) days** after service of the order upon the tenant.

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.

I also find that the landlord is entitled to a monetary award of **\$5,880.00** comprised of outstanding rent of \$5,830.00, which is up to and includes April 2015, rent and the \$50 filing fee paid by the landlord for this application.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of **\$400.00** to offset their 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 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 is granted an order of possession for the rental unit and a monetary order for the balance due.

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: April 16, 2015

Residential Tenancy Branch

