



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0913118 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant.

Although served with the Application for Dispute Resolution and Notice of Hearing, by registered mail on July 10, 2015, the tenant did not appear. A Canada post tracking number was provided as evidence of service. I find that the tenant has been duly served in accordance with the Act.

The landlord's agents, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

Based on the testimony of the landlord's agents, I find that the tenant was served with a notice to end tenancy for non-payment of rent on June 2, 2015, by personal service. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

The landlord's agents testified that the tenant did not pay the rent and did not dispute the notice. The agents stated that they applied for an order possession through the direct request process and that application was dismissed with leave to reapply on June 18, 2015.

The landlord's agents indicate that on July 7, 2015, the tenant informed them that the landlords were not allowed to remove their belongings due to the previous order on June 18, 2015. The agents stated that although the tenant has been moving items from the unit, they have had no correspondence with the tenant and the tenant has legal possession of the unit. The landlord seeks an order of possession.

The landlord's agent testified that the monthly rent is \$950.00 and they hold a security deposit of \$475.00. The landlord seeks to recover unpaid for June 2015, July 2015, August 2015 and September 2015 in the amount of \$3,800.00 and an order to retain the security deposit.

Analysis

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

The tenant has not paid the outstanding rent and did not apply to dispute the notice 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, which was June 12, 2015.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

In this case, the landlord made a previous application for dispute resolution to obtain an order of possession by the direct request process. That application was dismissed with leave to reapply, due to a service issue of the direct request proceeding package.

The tenant did not vacate the rental unit on June 12, 2015, in accordance with the notice and on July 7, 2015, informed the landlord after receiving the previous decision that they were not allowed to remove their belongings. The tenant has not communicated any further with the landlord and has not returned possession of the rental unit to the landlord.

I find the tenant breached the Act, when they failed to pay rent for June 2015, July 2015, August 2015, and September 2015, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for June 2015, July 2015 and August 2015, in the amount of **\$2,850.00**.

Although the landlord was seeking unpaid rent for September 2015, I find that it may be possible for the landlord to re-rent the unit for a portion of September to mitigate the loss of rent for September 2015. Therefore, I dismiss the landlord's request for September 2015, rent with leave to reapply.

I find that the landlord has established a total monetary claim of **\$2,900.00** comprised of unpaid rent as stated above and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$475.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$2,425.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

As I have granted an order of possession on the basis of the unpaid rent. I find there is no requirement for me to hear the merits of the notice to end tenancy for cause as I have found the tenancy has legally ended.

Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant 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: September 10, 2015

Residential Tenancy Branch

