



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act ("Act") for an order of possession for the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued to the tenant, for authority to retain the tenant's security deposit, and for recovery of the filing fee paid for this application.

Only the listed landlord was present at the beginning of the hearing along with his brother, who the landlord said was a co-landlord. 8 minutes into the hearing, the tenant dialled in and was given the opportunity to be heard, even though at that point the landlord had submitted their evidence in support of their application.

The landlord was questioned as to service of their application and as the landlord submitted that he served the tenant personally with the application for dispute resolution, I accepted that the tenant had been served in a manner complying with section 89(1) of the Act.

At the hearing, the participants were 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, authority to retain the tenant's security deposit, and for recovery of the filing fee paid for this application?

Background and Evidence

The landlord confirmed there was no written tenancy agreement and stated that the tenancy began April 2015, for a monthly rent of \$750.00 due on the first day of the month, and with the tenant having paid a security deposit of \$375.00.

The landlord gave evidence that on December 3, 2015, he served the tenant the Notice by attaching it to the tenant's door, listing unpaid rent of \$2050.00 as of October 1, 2015. The effective vacancy date listed on the Notice was December 14, 2015.

Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on December 6, 2015, and the effective move out date is automatically changed to December 16, 2015, pursuant to section 53 of the Act.

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 stated that the rent listed was owed as of December 1, 2015, not October 1, 2015, and that the tenant has not made any further payments of rent through January 2016.

The landlord did not file a monetary claim; rather, the landlord asked to retain the tenant's security deposit.

The tenant acknowledged that he had not paid rent; however, the tenant further stated he should be given a rent credit due to reduced services.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act. As the tenant has not submitted evidence under Sec. 33 of the Act that that he has incurred any expenses for emergency repairs, he has not met this criterion.

When a tenant fails to pay rent due pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here.

As such, I find the landlord submitted sufficient evidence to prove that the tenant was served the Notice, owed the rent listed, 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, in this case, November 30, 2015.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two 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.

As the landlord has not made a monetary claim, I decline their request to retain the tenant's security deposit in full. I do, however, grant the landlord recovery of the filing fee of \$50.00 for his successful application and direct the landlord to retain \$50.00 from the tenant's security deposit in satisfaction of this award.

Conclusion

The landlord's application for an order of possession and recovery of the filing fee has been granted.

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: January 19, 2016

Residential Tenancy Branch

