



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNDC, FF; CNR, CNC, OLC

Introduction

This hearing was scheduled in response to applications by both parties:

- i) by the landlord for an order of possession for unpaid rent / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee; and
- ii) by the tenant for cancellation of a notice to end tenancy for unpaid rent / cancellation of a notice to end tenancy for cause / and an order instructing the landlord to comply with the Act, Regulation or tenancy agreement.

While the landlord attended and gave affirmed testimony, the tenant did not appear, and the landlord testified that he had not been served with the tenant's hearing package. However, the landlord testified that he served the tenant with his own application and the notice of hearing by registered mail. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that a notice card was left at the unit which informed the tenant of the attempted delivery on November 24, 2015, in addition to advising her where the package could be picked up. However, it does not appear that the tenant picked up the notice. Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant has been served in compliance with section 89 of the Act which addresses **Special rules for certain documents**.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit is located in the basement portion of a house. The landlord lives upstairs.

Pursuant to a written tenancy agreement, the month-to-month tenancy began on June 01, 2015. Monthly rent of \$775.00 is due and payable in advance on the first day of each month, and a security deposit of \$375.00 was collected.

Arising from rent which was unpaid when due on November 01, 2015, the landlord issued a 10 day notice to end tenancy dated November 04, 2015. The notice was served by way of posting to the unit door on that same date. A copy of the notice was submitted in evidence. Subsequently, the tenant filed an application to dispute the notice on November 12, 2015. The landlord testified, however, that the tenant has made no further payment toward rent, and that she still has possession of the unit.

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated November 04, 2015. The tenant filed an application to dispute the notice, however, she did not pay the outstanding rent within 5 days of receiving it, and she did not attend the hearing scheduled in response to hers or the landlord's application. The tenant 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. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

As to compensation, I find that the landlord has established a claim of **\$2,375.00**:

\$775.00: *unpaid rent for November 2015*

\$775.00: *unpaid rent for December 2015*

\$775.00: *unpaid rent for January 2016*

\$50.00: *filing fee*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, and provides in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Following from the above, I order that the landlord retain the security deposit of **\$375.00**, and I grant the landlord a **monetary order** for the balance owed of **\$2,000.00** (\$2,375.00 - \$375.00).

In relation to the landlord's application for recovery of costs arising from the use of registered mail, section 72 of the Act, as above, provides that with the exception of the filing fee, the Act does not provide for the award of costs associated with litigation to either party. Accordingly, this aspect of the application must be dismissed.

Finally, concerning the landlord's application for recovery of costs arising from repairs to a damaged outside door handle, in the absence of a receipt or evidence of move-in and / or move-out condition inspection reports, this aspect of the application is dismissed with leave to reapply.

Conclusion

In the absence of the tenant at the hearing scheduled in response to applications by both parties, the tenant's application is hereby dismissed.

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$2,000.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court, and enforced as an order of that Court.

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 18, 2016

Residential Tenancy Branch

