



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord participated in the teleconference hearing, but the tenant did not call into the hearing. The landlord submitted evidence that they served the tenant with the application for dispute resolution and notice of hearing by registered mail sent on February 26, 2016. Section 90 of the Act states that a document is deemed to have been served five days after mailing. I found that the tenant was deemed served with notice of the hearing on March 2, 2016, and I proceeded with the hearing in the absence of the tenant.

On March 23, 2016 the landlord submitted an amendment to their application to request monetary compensation for anticipated cleaning and repair costs. As the tenant is still in the rental unit, I informed the landlord that this portion of their claim was premature. I dismiss this portion with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

The tenant first began occupying the rental unit on December 1, 2102. The current tenancy agreement began on July 1, 2105 as a fixed term to end on June 30, 2016. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$1,250.00. The tenancy agreement indicates that monthly rent was

\$2,500.00, payable in advance on the first day of each month. It also contains a clause, however, indicating that rent would increase as of October 1, 2015, to \$2,585.00.

The tenant failed to pay rent in the months of January and February 2016 and on February 6, 2016 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the months of March and April 2016.

The Landlord's evidence included the following:

- a copy of a residential tenancy agreement
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on February 6, 2016, with an effective vacancy date of February 22, 2016, for failure to pay rent in the amount of \$5,170.00 that was due on February 1, 2016;
- testimony that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting the notice on the tenant's door on February 6, 2016; and
- a copy of the Landlord's Application for Dispute Resolution, filed February 26, 2016.

Analysis

I have reviewed all evidence and I accept that the tenant was served with the notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on February 9, 2016.

I accept the evidence before me that the tenant has failed to pay the rent owed within the five days granted under section 46(4) of the Act. I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. The landlord is therefore entitled to an order of possession.

As for the monetary order, based on the above-noted evidence I find that the landlord has established a claim for unpaid rent. However, the clause in the tenancy agreement that indicates an increase in rent beginning October 1, 2015 is not valid, as it is contrary to the Act. I therefore grant the landlord \$10,000.00 for unpaid rent and lost revenue for January through April 2016.

As their application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

I grant the landlord an order of possession effective two days from service. The tenant must be served with the order of possession. 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.

The landlord is entitled to \$10,100.00. I order that the landlord retain the security deposit of \$1,250.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$8,850.00. This order may be 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: April 13, 2016

Residential Tenancy Branch