



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent and to recover the filing fee for the Application.

Only the Landlord's agent, Y.L. appeared at the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

Y.L. testified that she served the Tenant with the Notice of Hearing and their Application on May 17, 2016 by registered mail to the rental unit. Y.L. also provided a copy of the tracking number in evidence and confirmed that the package was returned unclaimed.

Failure or refusal to accept registered mail does not negate service. Under section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served with notice of the hearing as of May 22, 2016 and I proceeded with the hearing in his absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Has the Tenant breached the *Act* or tenancy agreement, entitling the Landlord to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Should the Landlord recover the filing fee paid for her application?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement between the Landlord, the Tenant H.L. and a tenant J.Y. Y.L. testified that J.Y. moved out of the rental unit in February of 2015.

The tenancy began November 9, 2012. Monthly rent was payable in the amount of \$1,300.00. Y.L. testified that the rent has not been raised and remains \$1,300.00 payable on the 9th day of the month. A security deposit in the amount of \$650.00 was paid on November 9, 2012.

Y.L. testified that the Tenant failed to pay rent for the month of January 2016, February 2016, March 2016 and April 2016. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on April 13, 2016 indicating the amount of \$5,200.00 was due as of April 9, 2016 (the "Notice").

Based on the testimony of Y.L. and the filed Proof of Service, I find that the Tenant was served with the Notice on April 13, 2016 by regular mail. Section 90 of the *Residential Tenancy Act* provides that documents served in this manner are deemed served five days later. Y.L. testified that she also emailed the Tenant on April 13, 2016 a copy of the Notice. Accordingly, I find that the Tenant was served with the Notice as of April 18, 2016.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, April 23, 2016. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution (notably, as April 23, 2016 is a Saturday, the Tenant had until April 25, 2016 to file an Application to dispute the Notice).

Y.L. testified that to her knowledge the Tenant did not pay the outstanding rent, nor did he apply to dispute the Notice. She also confirmed that the Tenant failed to pay rent for May or June 2016 such that at the time of the hearing the amount of \$7,800.00 was owed for rent. The Landlord sought compensation for this amount in addition to recovery of the \$100.00 filing fee.

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 pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This Order may be filed in the B.C. Supreme Court and enforced as an Order of that Court.

I also find that the Landlord has established a total monetary claim of \$7,900.00 comprised of \$7,800.00 in outstanding rent and the \$100.00 fee paid by the Landlord for this application. I grant the Landlord a Monetary Order under section 67 of the *Act* for the balance due in the amount of **\$7,900.00**. This Monetary Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Y.L. stated that the Landlord wished to retain the Tenant's security deposit. As that claim was not made on the Landlord's Application for Dispute Resolution filed on May 16, 2016 and was therefore not before me, I decline the Landlord's request. The Landlord may still make an application to retain the security deposit and is cautioned to consider section 38 of the *Residential Tenancy Act*.

Y.L. also stated that the Tenant may have abandoned the rental unit. She was also cautioned to consider the provisions in the *Residential Tenancy Regulation* dealing with the Landlord's obligations with respect to the Tenant's property.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under section 46 of the *Residential Tenancy Act* 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 is granted a Monetary Order for the balance due in the amount of **\$7,900.00**.

This decision is final and binding on the parties, except as otherwise provided under the *Act*, and 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: June 14, 2016

Residential Tenancy Branch