



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:12 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on February 4, 2017, he personally served an adult roommate of the tenant with a copy of the Application for Dispute Resolution and Notice of Hearing.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

The landlord's application for a monetary order including recovery of the filing fee for this application is dismissed with leave to reapply as the application for dispute resolution was not served on the tenant by a method permitted under section 89 of the Act. The landlord served the application on an adult residing with the tenant. Section 89 of the Act permits this as a method of service for the purposes of an application for an order of possession but not for a monetary order.

Issues

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

Background and Evidence

The tenancy began on September 15, 2016 and the current monthly rent is \$750.00 payable on the 1st day of each month. The tenant paid a security deposit of \$375.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on January 21, 2017 he personally served the tenant with the 10 day Notice to End Tenancy for unpaid rent or utilities. The landlord testified that the tenant did not pay the outstanding amount of rent as indicated in the Notice within five days of service of the Notice.

Analysis

I am satisfied that the tenant was personally served with the 10 day Notice to End Tenancy on January 21, 2017 pursuant to section 88 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, January 31, 2017.

I find that the Notice by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Conclusion

The landlord's application for a monetary order and to retain the security deposit is dismissed with leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: March 01, 2017

Residential Tenancy Branch