



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; and to recover the filing fee associated with this application.

The landlord's agent participated in the hearing and provided affirmed testimony. He testified that the landlord served the Notice of a Dispute Resolution Hearing to the tenant by posting the notice on the tenant's door. The landlord's agent testified that he met the tenant approximately one week ago and that the tenant acknowledged being aware of this hearing. The tenant did not participate and the hearing proceeded in the tenant's absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a half duplex. The landlord's agent testified that the landlord took possession of the property in December 2010 and that this tenancy was already in place. The rent is \$800.00 per month.

The landlord's agent testified that the tenant expressed concerns with the tenancy when he met with him, and that he claimed that he had made repairs to the unit in exchange for rent. The agent stated that the landlord never agreed to these arrangements; the agent said that the tenant held back \$200.00 from the May and June 2011 rents, for a balance owing of \$1200.00. In the documentary evidence, the landlord provided a copy of a 10 Day Notice to End Tenancy dated June 12th, 2011, and effective June 17th, 2011. The agent stated that the notice was posted on the tenant's door.

Analysis

I accept the landlord's agent's undisputed testimony that the tenant was served with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution. Therefore the landlord is entitled to an Order of Possession.

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*.

On the evidence I find that the tenant did not pay rent as required under the *Act*. If the tenant has concerns with the tenancy, a remedy is to seek assistance from the Residential Tenancy Branch and to make an application for dispute resolution. The landlord had grounds to issue the tenant with a 10 Day Notice to End Tenancy and the landlord is entitled to a monetary order as claimed.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant. If necessary, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord established a claim of \$1200.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee and pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$1250.00.

This Order may be registered 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: July 14, 2011.

Residential Tenancy Branch