



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and breach of an agreement; a Monetary Order for unpaid rent; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt and tracking number as evidence the tenant was sent the hearing package by registered mail on September 8, 2011. The landlord's agent confirmed the tenant did not pick up the mail. Where documents are sent via registered mail they are deemed to be received five days later under section 90 of the Act, even if the recipient refuses to accept or pick up the mail. Accordingly, I found the tenant was sufficiently served with the hearing documents and I proceeded to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to recover unpaid rent for September 2011?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced on May 15, 2011 and the tenant paid a \$450.00 security deposit. The tenant is required to pay rent of \$900.00 on the 1st day of every month. The landlord issued a 1 Month Notice to End Tenancy for Cause on August 18, 2011 with an effective date of September 30, 2011. The tenant did not pay rent for September 2011 and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door on September 3, 2011. The 10 Day Notice indicates rent of \$900.00 was outstanding as of September 1, 2011 and had a stated effective date of September 12, 2011. I heard that the tenant did not pay the outstanding rent and continues to occupy the rental unit.

Provided as documentary evidence for this proceeding was a copy of: the tenancy agreement; the 1 Month Notice; the 10 Day Notice; two breach letters; an authorization letter for the landlord's agent; and, the registered mail receipt.

Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice. Since the 10 Day Notice was posted it is deemed to be received three days later and the effective date automatically changed to read September 16, 2011 pursuant to section 53 of the Act.

Since the tenant did not pay the outstanding rent or dispute the 10 Day Notice I find the tenancy ended on September 16, 2011 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant. If the tenant does not comply with the Order of Possession the landlord may enforce it in The Supreme Court of British Columbia as an Order of that court.

Since I have found the tenancy ended September 16, 2011 for unpaid rent I determined it unnecessary to consider whether the 1 Month Notice was valid.

I find the landlord entitled to recover unpaid rent for the month of September 2011. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

September 2011 rent	\$ 900.00
Filing fee	50.00
Less: security deposit	<u>(450.00)</u>
Monetary Order	\$ 500.00

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$500.00 to serve upon the tenant.

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: October 04, 2011.

Residential Tenancy Branch