Dispute Resolution Services

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 for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent only.

The landlord provided documentary confirmation the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on April 24, 2012 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

Based on this evidence of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The landlord testified the parties began a month to month tenancy in October 1989 for the current monthly rent of $1,290.00 due on the 1st of each month and a security deposit of $300.00 was paid; and

The landlord provided into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on April 11, 2012 with an effective vacancy date of April 21, 2012 due to $1,380.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the months of March and April 2012 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent personally on April 11, 2012.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlord's agent testified the tenant did pay the rent in full on May 9, 2012 and that he was issued a receipt for use and occupancy only.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on April 11, 2012 and the effective date of the notice was April 21, 2012. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find 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.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

From the landlord's agent's testimony, I accept there is no longer any outstanding rent owed to the landlord and I dismiss the portion of the landlord's Application seeking a monetary order or to retain the security deposit, at this time. However, as the landlord has been successful in this Application I grant the landlord a monetary order in the amount of $50.00 for the filing fee for this Application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: May 11, 2012.

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Residential Tenancy Branch