



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNSD, MNR, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order of possession to the rental unit due to alleged breach of an agreement with the landlord, for authority to retain all or part of the tenant's security deposit, for a monetary order for unpaid rent and to recover the filing fee for the application.

The landlord appeared; the tenant did not appear.

The landlord testified that the tenant was served with the Application for Dispute Resolution and Notice of Hearing by registered mail on August 28, 2012. The landlord supplied testimony of the tracking number of the registered mail.

I find the tenant was served in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit, for authority to retain the tenant's security deposit and to recover the filing fee?

Background and Evidence

This month to month tenancy began on January 1, 2007, current monthly rent is \$845.00 and the tenant paid a security deposit of \$377.50 at the beginning of the tenancy.

The landlord submitted evidence that on August 7, 2012, the tenant was served a 1 Month Notice to End Tenancy for Cause (the "Notice"), by leaving it with the tenant, listing an effective end of tenancy on September 30, 2012.

The Notice explained that the tenant had ten days to dispute the Notice. It also explains that if the tenant did not file an application to dispute the Notice within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

The cause as listed on the Notice alleged that the tenant is repeatedly late in paying rent.

The landlord said that the tenant has now paid rent through September 2012, but that the tenant was informed that the rent payments did not reinstate the tenancy.

The landlord requested a monetary order for the October rent of \$845.00.

The landlord's relevant evidence included a copy of the Notice, a warning letter to the tenant regarding late payments, receipts issued to the tenant showing the rent was being accepted on a "for use and occupancy" basis, the tenancy agreement and a tenant ledger sheet showing the payment history of the tenant throughout this tenancy. I note that the tenant ledger sheet shows the tenant made late payments of rent 4 times since the beginning of this year.

I have no evidence before me that the tenant applied to dispute the Notice.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

I find the tenant was served a 1 Month Notice to End Tenancy for Cause (the "Notice") , did not apply to dispute the Notice within ten days of service and is therefore

conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant.

I grant the landlord a final, legally binding order of possession, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

I find the landlord is not entitled to a monetary order for loss of revenue for October 2012, as the landlord has not proven a loss for that month as of the day of the hearing in September. I therefore dismiss their request for such monetary claim, with leave to reapply.

I find that the landlord has established a total monetary claim of \$50.00 for recovery of the filing fee paid by the landlord for this application.

At the landlord's request, I allow the landlord to retain \$50.00 from the tenant's security deposit in satisfaction of the claim.

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* and is being mailed to both the applicant and the respondent.

Dated: September 28, 2012.

Residential Tenancy Branch