



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR; MNR; MNDC, MNSD; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenant.

The Landlord's agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that another agent hand delivered the Notice of Hearing documents to the Tenant, in the hotel lobby, on September 17, 2012. He stated that the Tenant left the documents in the lobby. The Landlord's agent stated that he also personally served the Tenant in the hotel lobby on September 18, 2012. He testified that the Tenant took the documents in her hand, but then dropped them in the lobby, so he went to her room and slid them under her door.

I note that the Tenant provided documentary evidence to the Residential Tenancy Branch with respect to the Landlord's application.

Based on the affirmed testimony of the Landlord's agent, I am satisfied that the Tenant was duly served with the Notice of Hearing documents pursuant to the provisions of Section 89(1)(a) of the Act on September 18, 2012.

Rule 10.1 of the Residential Tenancy Branch Rules of Procedure provides as follows:

Commencement of Hearing The hearing must commence at the scheduled time unless otherwise decided by the dispute resolution officer. The dispute resolution officer may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference, which remained open for 17 minutes. The Hearing proceeded in the Tenant's absence.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Landlord's agent gave the following testimony and evidence:

At the outset of the Hearing, the Landlord's agent gave some important background history with respect to this tenancy. He stated that the parties were in a hearing together on September 6, 2012, on an application filed by the Tenant. He stated that the dispute resolution officer in the September 6 hearing confirmed that this is a tenancy under the jurisdiction of the Residential Tenancy Act. He stated that the dispute resolution officer also ordered the Landlord to stop collecting tax on the rent. The Landlord's agent stated that the Dispute Resolution Officer found that monthly rent, without taxes, is \$1,000.00.

The Landlord's agent issued a 10 Day Notice to End Tenancy for Unpaid Rent on September 6, 2012 (the "Notice"), for rent that was due on August 31, 2012. He stated that he attempted to serve the Tenant with the Notice by handing it to her, but that she ran away from him, so he posted it to the door of the rental unit on September 6, 2012.

The Landlord's agent testified that the Tenant has not paid any of the arrears and that she has not paid any rent for October, 2012. He asked for a monetary award in the amount of \$2,000.00.

The Landlord's agent stated that the Tenant paid a security deposit in the amount of \$500.00 on July 2, 2012, and that the Landlord seeks to retain the security deposit and set it off against its monetary award.

Analysis

I searched the Residential Tenancy Branch's electronic filing system and located the earlier Decision that the Landlord's agent referred to in his submissions. That matter was scheduled to consider the Tenant's application for an Order of Possession of the rental unit and compensation for damage or loss. The Dispute Resolution Officer dismissed the Tenant's application and made a finding that monthly rent is \$999.90.

I accept that the Landlord's agent's undisputed testimony that he served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on September 6, 2012. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenant did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to the provisions of Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on September 19,

2012. I find that the Tenant is overholding and that the Landlord is entitled to an Order of Possession **effective 2 days after service of the Order upon the Tenant.**

I accept the Landlord's agent's testimony that the Tenant has not paid any rent for September and that she remains in the rental unit. I find that the Landlord has suffered a loss as a result of the Tenant's breach of the Act and that therefore it is entitled to recover that loss from the Tenant. I allow the Landlord's agent's application to amend the Landlord's application to include loss of revenue for the month of October, 2012.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary award.

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Unpaid rent and loss of revenue (\$999.90 x 2 months)	\$1,999.80
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,049.80
Less security deposit	<u>- \$500.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,549.80

Conclusion

The Landlord is provided an Order of Possession effective **2 days after service of the Order upon the Tenant.** This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is provided a Monetary Order in the amount of **\$1,549.80** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: October 18, 2012.

Residential Tenancy Branch