



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding David Burr Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and money owed or compensation for damage or loss, for authority to retain the tenant's security deposit and to recover the filing fee.

Preliminary matter-The parties attended and I attempted to explain the hearing process to the parties; however due to the immediate shouting and interruptions by the tenant, I was unable to initially begin the hearing. Some of the interruptions included making disrespectful comments about the landlord's agent.

After finally getting the tenant's attention, I explained that the continued interruptions would result in him being placed in the mute mode; the interruptions immediately continued until the tenant was placed on mute, but allowed to listen, while the landlord testified, pursuant to Section 8.7 of the Rules of Procedure.

At the conclusion of the landlord's testimony, I returned the tenant to the hearing so that he could testify in response to the landlord's application. At the conclusion of the tenant's oral submissions, when attempting to hear from the landlord again, the tenant continued with his interruptions; the tenant was then placed in the mute mode again through the conclusion of the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation and to recover the filing fee?

Background and Evidence

The landlord gave evidence that this tenant began living in the rental unit on April 1, 2006, alone, and that on April 1, 2007, the tenant signed a new written tenancy agreement, which included a co-tenant. The landlord holds a security deposit for the tenants in the amount of \$412.50.

The current monthly rent is \$998. The landlord explained that the two tenants paid their portion of the rent separately, with the other tenant paying \$500 per month and this tenant paying \$498 per month.

The landlord gave evidence that on November 7, 2013, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by attaching it to the tenant's door, listing unpaid rent of \$996 as of November 1, 2013. The effective vacancy date listed on the Notice was November 17, 2013.

Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on November 10, 2013, and the effective move out date is automatically changed to November 20, 2013, pursuant to section 53 of the Act.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the other tenant has paid her portion of the rent of \$500 per month, but that this tenant has not paid his monthly portion of \$498 for October, November, December, 2013, or January 3014; the landlord stated that currently the tenant owes unpaid rent of \$1992.

In response to my question, the landlord submitted that the other tenant was a joint tenant and not a tenant in common; thus the order of possession for the rental unit, if granted, would apply to both tenants.

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

The tenant, after being returned to the hearing, acknowledged that he has not paid rent, out of a protest to the landlord for an alleged lack of running water, which the landlord refuses to repair. The tenant spoke of other issues with the landlord.

In response, the landlord testified that the water issue has been addressed.

Analysis

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

I find the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

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 also find that the landlord is entitled to a monetary award of \$2042 comprised of outstanding rent of \$1992 through January, 2014, and the \$50 filing fee paid by the landlord for this application.

Conclusion

The landlord's application has been granted.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$2042, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from 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* and is being mailed to both the applicant and the respondent.

Dated: January 16, 2014

Residential Tenancy Branch

