Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: OPR, MNR, MNSD, & FF

Introduction:

This hearing dealt with the landlord's application for an Order of Possession and a monetary claim due to non-payment of rent by the tenant. Both parties appeared for the hearing and were provided the opportunity to be heard.

Issues to be Determined:

Is the landlord entitled to an Order of Possession due to non-payment of rent by the tenant? Has the landlord established a monetary claim due to non-payment of rent?

Background and Evidence:

This tenancy began on September 1, 2007 for the monthly rent of $1,180.00 and a security deposit of $570.00. The tenant failed to pay rent on December 1, 2008 and the landlord issued a 10 day Notice to End Tenancy on December 3, 2008. As the notice was posted on the tenant's door it is deemed to have been received on December 5, 2008.

The tenant paid the outstanding rent for December 2008 on December 15, 2008 and received a receipt indicating that the payment was for "use and occupation only". The tenant did not pay the rent on January 1, 2009 and subsequently paid the rent for January 2009 on the 14th.

The landlord requests an Order of Possession effective January 31, 2009.

Analysis:

Pursuant to section 46(4) of the *Act* the tenant had 5 days from receiving the notice to either pay the outstanding rent or to file an application to dispute the notice. Having failed to exercise either of these rights the tenant is conclusively presumed to have accepted the end of the tenancy pursuant to section 46(5) of the *Act*.

On this basis I grant the landlord an Order of Possession effective **January 31, 2009** at **1:00 p.m.** This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.
The landlord acknowledged that there is no outstanding rent at this point and that a monetary claim is no longer necessary.

Conclusion:

I have accepted the landlord's application and issued an Order of Possession. I also Order that the landlord may recover the cost of this application by retaining $50.00 from the tenant's security deposit.

Dated January 21, 2009.

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Dispute Resolution Officer