



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, & FF

Introduction

This hearing dealt with the landlords' application seeking an Order of Possession and a monetary award due the tenant's failure to pay rent.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issue(s) to be Decided

Did the tenant breach the tenancy agreement and *Act* by failing to pay the rent entitling the landlords to an Order of Possession and monetary relief?

Background and Evidence

This tenancy began on April 1, 2009 for the monthly rent of \$1,700.00 and an \$850.00 security deposit paid by the tenant on April 1, 2009. The rent is due on the 1st of each month. The tenant was authorized by the landlords to rent out the lower unit in the property.

On December 31, 2010 the landlords served the tenant with a 10 day Notice to End Tenancy Due to Unpaid Rent by posting it to the door of the rental unit. The notice was issued because the tenant failed to pay the full rent owed for December 2010. The landlord stated that the tenant has subsequently failed to pay the rent owed for January and February 2011.

The landlord stated that the tenancy paid \$500.00 of the outstanding rent on December 23, 2010 and another \$400.00 on approximately January 7, 2011. The landlord requested payment of rent directly from the occupant of the basement suite since the tenant had failed to provide the rent money from the occupant in December. The landlord stated that the tenant currently owes \$2,650.00 including the unpaid rent for February 2011 and recovery of the \$50.00 filing fee paid for this application.

The tenant does not dispute the landlord's application and stated that she would vacate the rental unit by February 6, 2011.

Analysis

Based on the evidence and testimony of both parties, I find that the tenant has failed to pay the rent owed of \$1,800.00 for December 2010 and January 2011 as required by the tenancy agreement. I find that the tenant was served with a 10 day Notice to End Tenancy due to Unpaid rent and that the tenant failed to either pay the outstanding rent or to file an application for Dispute Resolution to dispute the notice in the five days provided by section 46(4) of the *Act*.

Pursuant to section 46(5) of the *Act*, I find that the tenant has conclusively accepted the end of the tenancy agreement effective January 14, 2011 and on this basis I grant the landlord's application seeking an Order of Possession for the rental unit.

I am satisfied by the evidence provided by the landlord that the tenant failed to pay rent owed in December 2010 and January 2011 in the amount of \$1,800.00 and I grant the landlord a monetary Order for this sum pursuant to section 67 of the *Act*. I also find that the landlord is entitled to a loss of revenue for half a month's rent in February 2011 in the amount of \$450.00. The landlord is at liberty to file a further application for Dispute Resolution against the tenant seeking the remaining loss of rent for February 2011 if they are unable to mitigate their loss.

I also find that the landlords has entered into a verbal tenancy agreement with the occupant from the lower rental unit when they accepted rent directly starting on January 1, 2011. Since January 1, 2011 the tenant is only responsible for the loss of rent for the upper unit of the resident in the amount of \$900.00.

I grant the landlords' application for an Order of Possession and find that a monetary claim in the amount of **\$2,200.00**.

Conclusion

I find that the landlord is entitled to an Order of Possession of the rental unit effective **two (2) days** after it has been served upon the tenant. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim due to breach of the tenancy agreement by the tenant for the sum of **\$2,200.00**. I grant the landlord a monetary Order for this sum. This Order may be filed with the Province of British Columbia Small Claims Court 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: February 04, 2011.

Residential Tenancy Branch