



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent and to keep the security deposit; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. He testified that he served the Notice of a Dispute Resolution Hearing to the tenant in person on February 28th, 2011. The tenant did not participate and the hearing proceeded in the tenant's absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a two level single detached home. Pursuant to a written agreement, the fixed term tenancy was based on a one year lease starting on November 1st 2011 and ending October 31st, 2011, at a rate of \$2500.00 payable on the first of each month.

Although not specified in the agreement, the tenant rents a portion of the basement suite for \$600.00 per month. The tenant paid a security deposit of \$300.00. The upstairs tenant is the owner's designated landlord for the property.

The landlord testified that the tenant did not pay rent for the months of February and March 2011, and is making a claim for the sum of \$1200.00. He stated that he served the tenant in person with a 10 Day Notice to End Tenancy on February 14th, 2011. The landlord stated that the tenant advised him that he had no intentions to pay rent or to cooperate in this tenancy agreement.

Analysis

I accept the landlord's undisputed testimony that he served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a Notice to End Tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution. Accordingly the landlord is entitled to an Order of Possession and a monetary order.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Since the landlord was successful, I award him recovery of the \$50.00 filing fee. I authorize the landlord to keep the tenant's \$300.00 security deposit and pursuant to section 67 of the Act, I award the landlord a monetary claim in the balance of \$950.00. This Order may be registered in the 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: March 14, 2011.

Residential Tenancy Branch