



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent and utilities- Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The Tenant states that the tenancy began on December 5, 2006 with monthly rent in the amount of \$950.00 and that a security deposit in the amount of \$475.00 was also paid at the beginning of the tenancy. The Landlord states that he does not know when the tenancy started as he has no records since taking over from the previous agent. The Parties agree that a tenancy agreement was signed a couple of months ago and that although the agreement states the beginning of the tenancy was in 2008, the Tenant disagreed with date at the time of signing the agreement. The Parties agree that the Tenant failed to pay rent for August and September 2011 and that on September 5, 2011, the Landlord personally served the Tenant with a notice to end tenancy for non-

payment of rent. The Tenant has not filed an Application for Dispute Resolution, has not paid the rental arrears and has not moved out of the unit. The Tenant states that she was unable to pay the rent when it was due as the government took her funds from her bank account. The Tenant states that since September 5, 2011, she has made two payments of \$250.00 towards the utility arrears but states that she did not know what amount of arrears were outstanding at the time and does not agree that arrears were in the amount claimed by the Landlord. The Landlord provided no evidence in relation to the utilities owing, such as a ledger of payments or copies of utility invoices.

The Landlord claims \$1,900.00 in rental arrears and \$652.00 in utility arrears.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's evidence I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has not filed an application to dispute the notice and has not paid the outstanding rent. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. I also find that the Landlord has established a monetary claim for **\$1,900.00** in unpaid rent.

Given the lack of supporting evidence from the Landlord on the amount of utilities accrued or outstanding or paid and considering the Tenant's disagreement with the amount claimed by the Landlord, I find that the Landlord has failed to substantiate on a balance of probabilities that the amount claimed in the application is outstanding. I therefore dismiss this part of the application. As the application has had merit, I find that the Landlord is entitled to recovery of the \$50 filing fee, for a total entitlement of **\$1,950.00**.

Given that that the Landlord could not state when the tenancy started or provide evidence on the security deposit, I accept the Tenant's evidence that the tenancy started on December 5, 2006 and that a security deposit in the amount of \$475.00 was paid at the onset of the tenancy. Setting this deposit plus interest in the amount of **\$489.54** off the monetary entitlement of the Landlord leaves a balance payable by the Tenant in the amount of **\$1,460.46**.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain the **deposit** and interest of \$489.54 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,460.46**. If necessary, this order may be filed 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: October 20, 2011.

Residential Tenancy Branch