



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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 money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for unpaid rent; 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. She testified that she served the Notice of a Dispute Resolution Hearing to the tenant by way of registered mail sent on November 15th, 2011, and provided a Canada Post tracking number. 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 an apartment in a multi-unit complex. Pursuant to a written agreement, the fixed term tenancy started on September 1st, 2010, ending on February 28th, 2011 and continued month-to-month after that date. The rent is \$850.00 per month and the tenant paid a security deposit of \$425.00.

The landlord testified that the tenant has not paid rent for September, October, and November 2011, and that he continues to occupy the rental unit. She stated that the tenant lost his job and has no money to pay the rent. She said that rent payments were arranged through automatic direct deposits from the tenant's account, and that each time she has received notice of insufficient funds with a \$25.00 bank fee.

The landlord updated her monetary claim as follows:

- Unpaid rent for September 2011:	\$ 850.00
- Late fee and NSF fee:	\$ 50.00
- Unpaid rent for October 2011:	\$ 850.00
- Late fee and NSF fee:	\$ 50.00
- Unpaid rent for November 2011:	\$ 850.00
- Late fee and NSF fee:	\$ 50.00
- Unpaid rent for December 2011:	\$ 850.00
- Late fee and NSF fee:	\$ 50.00
- Sub-total:	\$3600.00

In her documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy dated October 26th, 2011, with proof of service that the notice was posted on the tenant's door on that day.

Analysis

I accept the landlord's undisputed testimony that she served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of 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. The landlord's Notice to End Tenancy is valid and on that basis the landlord is entitled to an Order of Possession.

I also accept the landlord's testimony concerning the unpaid rent. I find that the landlord is entitled to recover rent for September, October, and November 2011. Since the tenant continues to reside in the unit, I find that the landlord is entitled to recover the loss of rental income for December as well; however, I decline to award a late fee and a NSF fee for unpaid rent since that portion of the claim is premature.

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.

The landlord established a claim of \$3550.00. I authorize the landlord to retain the tenant's \$425.00 security deposit for a balance owing of \$3125.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$3175.00.

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: November 30, 2011.

Residential Tenancy Branch