



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant CNR,
 Landlord OPR, MNR, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on November 4, 2011 in accordance with section 89 of the Act.

The hearing started at 9:00 a.m. as scheduled, however by 9:10 a.m. the Tenant had not dialled into the conference call. In the absence of any evidence from the Tenant to support the application, the Tenant's application is dismissed without leave to reapply.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

Background and Evidence

This tenancy started in November 1, 2010 as a month to month tenancy. Rent was \$1,000.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$500.00 in November, 2010. The Landlord said he is not sure if the Tenant is living in the in the unit or not.

The Landlord said that the Tenant did not pay rent of \$1000.00 for October, 2011 when it was due and as a result, on October 24, 2011 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated October 24, 2011 on the door of the Tenant's rental unit. The Landlords continued to say the Tenant did not pay the rent for November, 2011 in the amount of \$1,000.00 as well.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding. The Landlord said his total claim is \$2,050.00.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy three days after it was posted on the rental unit's door, or on October 27, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than October 31, 2011. The Tenant did apply to dispute the Notice on October 31, 2011, but the application is dismissed as the Tenant did not attend the hearing.

I find that the Tenant has not paid the overdue rent and the Tenant's application to dispute the Notice to End Tenancy has been dismissed. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for October, 2011 in the amount of \$1,000.00 and unpaid rent for November, 2011 in the amount of \$1,000.00. I

As the Landlord has been successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:



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	Rent arrears:	\$2,000.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,050.00
Less:	Security Deposit	\$ 500.00	
	Subtotal:		\$ 500.00
	Balance Owing		\$1,550.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,550.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant's application is dismissed without leave to reapply.

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 21, 2011.

Residential Tenancy Branch