



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 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 tenants by way of registered mail sent on December 22nd, 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 April 1st, 2011 and was to end on March

31st, 2012. The rent is \$1200.00 per month and the tenant paid a security deposit of \$600.00.

The landlord testified that the tenant has a balance of \$495.00 owing for December 2011 rent. He stated that when he served the tenant in person with the 10 Day Notice to End Tenancy on December 9th, 2011, the tenant said that she had the money; however the landlord has not been paid yet.

In his documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy that he said she served to the tenant, and a copy of the 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 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 and find that the landlord is entitled to recover the loss of rental income for that month.

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 \$495.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee for a claim totalling \$545.00; accordingly I authorize the landlord to retain that amount from the tenant's \$600.00 security deposit, leaving the tenant with a balance of \$55.00.

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: January 11, 2012.

Residential Tenancy Branch