



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The male Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant at the rental unit on the Application for Dispute Resolution, via registered mail, on December 14, 2011. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The male Agent for the Landlord stated that this tenancy began on October 01, 2011; that the Tenant is required to pay monthly rent of \$950.00 on the first day of each month; and that the Tenant paid a security deposit of \$475.00.

The male Agent for the Landlord stated that \$200.33 in rent was paid for December of 2011 but that the remainder of the rent from December rent has not been paid. The Landlord has applied for unpaid rent in the amount of \$749.67.

The male Agent for the Landlord stated that a different agent for the Landlord was at the rental unit "four or five days ago" at which time that agent for the Landlord believed the

rental unit was still occupied. The male Agent the Landlord was unable to state whether the rental unit was occupied in January of 2012. The male Agent for the Landlord asked to amend the Application for Dispute Resolution to include a claim for unpaid rent from January of 2012.

The female Agent for the Landlord stated that she put a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of December 12, 2011, on the door of the rental unit. She stated that she believes she posted this Notice on the door on December 02, 2011, although she is not absolutely certain of this date, as she does not have her notes with her.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$950.00 by the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant still owes \$749.67 in rent for December of 2011. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$749.67 in outstanding rent to the Landlord.

I decline the Landlord's application to amend the Application for Dispute Resolution to include rent from January of 2012. While I would be inclined to amend the application to include rent from January if the Tenant was still in possession of the rental unit, I declined the application in these circumstances as there is no evidence to show that the Tenant retained possession of the rental unit during any portion of January. The Landlord retains the right to file an Application for Dispute Resolution seeking unpaid rent/loss of revenue from January of 2012.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on, or about, December 02, 2011.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$799.67, which is comprised of \$749.67 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit, in the amount of \$475.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$324.67. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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: January 03, 2012.

Residential Tenancy Branch