



Dispute Resolution Services

Residential Tenancy Branch

Office of Housing and Construction Standards

Ministry of Housing and Social Development

DECISION

Dispute Codes:, MNR MNSD OPR FF.

Introduction:

This hearing dealt with an application by the landlord for an Order of Possession and a monetary claim related to non-payment of rent by the tenant. Although the tenant was served with notice of this hearing and the landlord's application by registered mail he did not appear for the hearing. I proceeded with the hearing in the tenants' absence.

Issues to be Determined:

Is the landlord entitled to an Order of Possession and a monetary claim due to the tenant's failure to pay the rent? May the landlord retain the tenant's security deposit plus interest in partial satisfaction of this claim?

Background and Evidence:

This tenancy began on March 1, 2007 for the monthly rent of \$725.00. The tenant paid a security deposit of \$362.50 on March 2, 2007. In September 2008 the tenant failed to pay his full rent by \$125.00. On September 3, 2008 the landlord served the tenant with a ten day Notice to End Tenancy due to non-payment of rent.

The landlord stated that on October 4, 2008 the tenant paid the sum of \$725.00 and that she provided the tenant with a receipt for "use and occupancy only". Then in November 2008 the tenant failed to pay his rent again. The tenant subsequently vacated the rental unit effective November 14, 2008. The landlord stated that she was successful in finding a new tenant effective November 15, 2008.

Analysis:

The tenant had 5 days to either pay the outstanding rent or to file an application to dispute the notice. Having failing to exercise either of these rights the tenant is conclusively presumed to have accepted the end of the tenancy.

I find that the tenant was in breach of the tenancy agreement by failing to pay rent and that the landlord has established a monetary claim for the sum of \$563.33. This sum is comprised of the outstanding rent of \$125.00 from September 2008, a late fee of \$50.00 for September and November 2008, the loss of rental revenue from November 1 to 14th, 2008 for the sum of \$338.33 plus the recovery of the \$50.00 filling fee the

landlord paid for this application. From this sum I Order that the landlord may retain the tenant's security deposit plus interest of \$372.02 in partial satisfaction of this claim.

Conclusion:

I grant the landlord's application and grant a monetary Order to the landlord for the sum of **\$191.31**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: November 26, 2008.
