



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC MNR MNSD OPR FF

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on November 13, 2008, the tenant did not participate in the conference call hearing.

On March 26, 2008, the landlord collected a security deposit from the tenant in the amount of \$570.00. The tenancy began on April 1. Rent in the amount of \$1135.00 is payable in advance on the first day of each month. The tenant failed to pay rent in the month of November and on November 2, the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the month of December.

Based on the landlord's testimony, I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant has not paid the outstanding rent and has not applied for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts, I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord is seeking to recover from the tenant outstanding rent for the month of November in the amount of \$545.44. At the outset of the hearing, the landlord said that the tenant moved out on November 20. Later, the landlord said that the tenant never handed in the key of the rental unit and she only became aware of the tenant having moved out from another tenant of the building yesterday. The landlord added that she might be able to re-rent the rental unit for December 15 depending if it has any damages. The landlord is therefore seeking to include a claim for loss of income for the month of December in the amount of \$1135.00. I find that the tenant should reasonably have known that the landlord could not re-rent the unit while he was still in residence. I also find that there is a reasonable possibility that the landlord be able to re-rent the unit for December 15. I therefore allow the claim for a further \$567.50.

The landlord is also seeking recovery of late payment charges for July, September and November. During the hearing, she referred me to clause 2 of the addendum to the tenancy agreement which stipulates the applicability of such charges. I also note that on file, there are three notices to end tenancy dated July 4, September 2 and November 2. I therefore allow the landlord's claim for \$25.00 late payment charge for each of the months of July, September and November.

Finally, the landlord is seeking recovery of bank charges of \$25.00 related to a returned check for the July rent. I find no documentation on file to support the landlord's assertion in this regard. I therefore disallow the landlord's claim of the \$25.00 bank charges.

Based on the above, I find that the landlord has established a total claim for \$1187.94 comprised of \$545.44 in unpaid rent, \$567.50 in loss of income and \$75.00 in late payment charges. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit and interest of \$575.89 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$662.05. This order may be filed in the Small Claims Court and

enforced as an order of that Court.

Dated: December 02, 2008