

Dispute Resolution Services

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

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession due to unpaid rent, a monetary order to recover rental arrears and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim. Both, the Tenant and Landlord were represented and participated in the conference call hearing.

At the outset of the hearing the landlord testified that all rent owed to the landlord up to January 31, 2009 had recently been paid by the tenant and accepted by the landlord for 'use and occupancy only', and the landlord wished to reduce the monetary order request to only the recovery of the filing fee of \$50. The tenant is still in possession of the suite and the landlord reiterated the request for an order of possession effective January 31, 2009.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an order of possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on July 1, 2005. Rent in the amount of \$209 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$400. The tenant failed to pay rent by the due date of the 1st. day in the month of December, 2008 and on December 03, 2008 the landlord served the tenant with a Ten (10) Day notice to end tenancy for unpaid rent. The tenant further failed to pay the rent on the due date in the month of January 2009, and eventually paid January's rent on January 07, 2009.

The landlord supplied evidence containing copies of six (6) Ten (10) Day notices to end tenancy for unpaid rent for the calendar year 2008 and testified that in the same period of time, the landlord had gone to great lengths and had been more than reasonable in accommodating the tenant by allowing the tenancy to continue, even after very late payments of rent, a breach letter and a final warning was issued to the tenant following previous notices. The tenant testified that she did not take seriously this latest Ten (10) Day notice to end tenancy for unpaid rent, although she was aware of her right and opportunity to dispute the Notice to have it cancelled.

Analysis

Based on the landlord's testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant did not pay the rent owing within five (5) days after being served 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 and the landlord's verbal request of an order of possession in the hearing, I find that the landlord is entitled to an order of possession.

I find the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I grant an order of possession to the landlord with an effective date of January 31, 2009. The tenant must be served with this 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.

I order that the landlord retain **\$50**, for the filing fee portion of the claim, from the tenant's security deposit.

Dated January 20, 2009