



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNR, MNSD

Introduction

This hearing dealt with the landlord's application for an order of possession, a monetary order for unpaid rent and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the hearing and each gave affirmed testimony.

Issues to be Decided

- Whether the landlord is entitled to an order of possession
- Whether the landlord is entitled to a monetary order under the *Act*

Background and Evidence

Pursuant to a written residential tenancy agreement the month-to-month tenancy began on January 26, 2007. Currently, rent in the amount of \$672.00 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 of \$310.00. As of October 1, 2008, the tenant was in arrears with rent in the amount of \$869.00. As the tenant failed to pay all rent due the landlord served the tenant with a 10 day notice to end tenancy. After consideration of the tenant's installment payments toward overdue rent, effective December 31, 2008 the parties agreed that the total amount of rent outstanding was \$1,466.00. The tenant has further failed to pay any rent for the month of January 2009.

The landlord submitted into evidence a copy of the 10 day notice to end tenancy dated October 6, 2008 which was served in person on the tenant that same day.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenant is therefore conclusively presumed under section 46(5) of the *Act* 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.

As for the monetary order, I find the landlord has established a claim for \$1,791.16. This is comprised of the balance of unpaid rent for 2008 (\$1,466.00) and unpaid rent (pro-rated) from January 1 to 15, 2009, at which time the landlord has requested that the order of possession become effective (\$325.16). The landlord has not claimed for compensation for loss of rental income for the balance of January 2009 or for recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit of \$310.00 and interest of \$9.05 in partial satisfaction of the claim (total: \$319.05) and I grant the landlord a monetary order under section 67 of the *Act* for the balance due of \$1,472.11 (\$1,791.16 - \$319.05).

Conclusion

I hereby issue an order of possession in favour of the landlord effective on or before **1:00 pm, January 15, 2009**. This order must be served on the tenant. 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 hereby grant the landlord a monetary order under section 67 of the *Act* for **\$1,472.11**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: January 8, 2009

Dispute Resolution Officer