



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an order of possession, a monetary order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim, and recovery of the filing fee for this application. The landlord participated in the hearing and gave affirmed testimony. Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, the tenant did not participate in the hearing. The landlord identified his understanding that the tenant is currently in hospital and that this may be the reason for her failure to participate in the hearing.

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 term of the tenancy was from October 1, 2007 to September 30, 2008. Thereafter, tenancy has continued on a month-to-month basis. According to the residential tenancy agreement, rent in the amount of \$1,250.00 is payable in advance on the first day of each month although, for a limited period of time, in practice the parties have agreed to payment of \$1,200.00. Effective January 1, 2009, rent is increased to \$1,296.00 per month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of

\$625.00. The tenant failed to pay the full amount of rent due for the month of November 2008; specifically, she was in arrears by \$200.00. Accordingly, the landlord served the tenant with a 10 day notice to end tenancy dated November 23, 2008 which was served by posting on the tenant's door. The tenant further failed to pay rent in the month of December 2008.

Following the service of the application for dispute resolution and notice of hearing, the landlord said the tenant's agent made payment towards the outstanding rent in the amount of \$500.00.

Analysis

Based on the undisputed testimony of the landlord, 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 \$2,196.00 in unpaid rent, which is comprised of the balance owed for December 2008 (\$900.00) and the full amount owed for January 2009 (\$1,296.00). The landlord is also entitled to recovery of the \$50.00 filing fee (total claim: \$2,246.00). I order that the landlord retain the security deposit of \$625.00 and interest of \$11.77 (total: \$636.77) in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 of the *Act* for the balance due of \$1,609.23 (\$2,246.00 - \$636.77).

The landlord indicated that he might exercise discretion to not serve the order of possession and the monetary order on the tenant in the event that he receives payment in full of all monies owed in a timely manner.

Conclusion

I hereby issue an order of possession in favour of the landlord effective on or before **1:00 pm, January 31, 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 **\$1,609.23**. This order must be served on the tenant and may be filed in the Small Claims Court and enforced as an order of that Court.

DATE: January 6, 2009

Dispute Resolution Officer