



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, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee. Both parties including one witness for the landlord attended the hearing and gave affirmed testimony. It appeared at times during the hearing that the tenant was engaged in a whispering conversation, however, she asserted that no one was with her.

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 tenancy agreement, the month-to-month tenancy began on June 1, 2007, with rent of \$1,500.00 payable in advance on the first day of each month. The tenant moved into the unit on May 16, 2007 and paid pro-rated rent from May 16 to 31, 2007. A security deposit of \$450.00 was paid on April 25, 2007. Based on her receipt of a rent subsidy, the tenant's portion of the monthly rent has been \$248.00. However, effective December 1, 2008, the landlord required full payment of \$1,500.00 rent; this was a result of the tenant's failure to satisfy the landlord that the level of monthly household income entitled her to continued receipt of a rent subsidy.

The tenant did not pay the full amount of rent due on December 1, 2008 and, instead, paid \$248.00. The landlord submitted into evidence a copy of the 10 day notice for unpaid rent dated December 4, 2008. The notice showed that rent of \$1,252.00 (\$1,500.00 - \$248.00) was due on December 1, 2008. The tenant claimed she did not receive the notice, whereas the landlord's witness (resident manager) testified that he taped the notice on the tenant's door at 12:20 pm on December 4, 2008. The witness also said he has a notation of this action recorded in his log book.

Analysis

Based on the documentary evidence and testimony of the parties, I prefer the evidence of the landlord and the landlord's witness and 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 which was December 17, 2008. Accordingly, 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 \$2,752.00. This is comprised of \$1,252.00 (rent outstanding for December 2008) and \$1,500.00 (rent due for January 2009). The landlord is also entitled to recovery of the \$50.00 filing fee (total claim: \$2,802.00). I order that the landlord retain the security deposit of \$450.00 plus interest of \$11.46, and I grant the landlord a monetary order under section 67 of the *Act* for the balance due of \$2,340.54 (\$2,802.00 - \$461.46).

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service upon the tenant. 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 **\$2,340.54**.

This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: January 26, 2009

Dispute Resolution Officer