



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 an application by the landlord for an Order of Possession and a monetary claim related to non-payment of rent by the tenant. Although the tenant was served with notice of this hearing and application when it was posted to the door of the rental unit on December 16, 2008, she did not appear for the hearing. I proceeded with the hearing in the tenant's absence having deemed the tenant as being served in accordance with section 89 of the *Act*.

Issues to be Determined:

Is the landlord entitled to an Order of Possession and a monetary claim due to non-payment of rent by the tenant? Is the landlord entitled to retain the tenant's security deposit plus interest in partial satisfaction of this claim?

Analysis:

I accept the landlord's evidence that the tenant was served with a ten day Notice to End Tenancy due to non-payment of rent on December 2, 2008. The tenant had 5 days to either pay the outstanding rent or to file an application to dispute the notice. Having failed to exercise either of these rights the tenant is conclusively presumed to have accepted the end of the tenancy pursuant to section 46(5) of the *Act*. On this basis I find that the landlord is entitled to an Order of Possession effective **two (2) days** after it is served upon the tenant. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I also accept the landlord's evidence that the tenant has failed to pay rent owed for December 2008 for the sum of \$800.00. I also accept that the tenant has failed to pay rent for continued occupation beyond the end of the tenancy as stated on the ten day Notice to End Tenancy. The landlord has requested compensation for lost rental revenue for January 2009 in the sum of \$800.00. The landlord also requests to recover the \$50.00 filing fee paid for this application from the tenant.

I accept the landlord's claim for outstanding rent for December 2008 for the sum of \$800.00 and the recovery of the \$50.00 filing fee. However, the landlord has a duty to mitigate his losses and I find it is not appropriate to award the landlord for loss of rental revenue for the full month of January 2009 at this time. I find it is reasonable that the landlord be compensated for loss of rent up to and including January 15, 2009 for the

sum of \$450.00. The landlord may file a new application if he experiences loss of rental revenue beyond this date.

I find that the landlord has established a total monetary claim for the sum of \$1,300.00. From this sum I Order that the landlord may retain the tenant's security deposit plus interest of \$401.36 in partial satisfaction of this claim.

I grant the landlord a monetary Order for the remaining balance owed of **\$898.67**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion:

I have granted the landlord's application for an Order of Possession and a monetary claim due to the tenant's failure to pay rent.

Dated January 02, 2009.

Dispute Resolution Officer