



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: OPR, MNR, & 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. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issues to be Determined:

Is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary claim due to non-payment of rent?

Background and Evidence:

Neither party provided any documentary evidence for this proceeding; however, both agreed to the following:

- That the tenant was served with a 10 day Notice to End Tenancy dated January 2, 2009 when it was posted on the door of his rental unit;
- That the tenant has failed to pay the rent for the months of December 2008, January, February and March 2009; and
- The tenant did not pay the outstanding rent or file an application to dispute the 10 day Notice to End Tenancy within five days after he received it.

The parties agreed that the tenancy began December 1, 2007 for the monthly rent of \$690.00 and a security deposit of \$345.00. The tenant is currently \$2,760.00 behind in his rent.

Analysis:

Section 46 of the *Act* states that a tenancy may be ended if the tenant breaches the tenancy agreement by failing to pay rent. Section 46(4) provides that a tenant may cancel or void a 10 day Notice to End Tenancy by paying the outstanding rent within five days of receiving the notice. The tenant also has five days to file an application for dispute resolution to request that the notice be set aside by a Dispute Resolution Officer.

Section 46(5) states that if a tenant fails to exercise either of these rights they are conclusively presumed to have accepted the end of the tenancy. In the circumstances before me the tenant did not exercise his rights under section 46(4) and has accepted the end of the tenancy.

On this basis I grant the landlord's request for 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 that the landlord has established a total monetary claim for the sum of \$2,120.00 comprises of the outstanding rent from December 2008 to February 28, 2009 plus the recovery of the \$50.00 filling fee the landlord paid for this application. The landlord has a duty to mitigate their losses and it is premature to grant a monetary claim for any loss for March 2009. The landlord may file a new application for any loss of rent for March 2009.

I grant the landlord a monetary Order for the sum of **\$2,120.00**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion:

I grant the landlord's application and have issued an Order of Possession and a monetary claim related to the tenant's failure to pay rent.

Dated March 02, 2009.

Dispute Resolution Officer