



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

OPR, MNR, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord seeking an Order of Possession and a monetary claim due 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 due to non-payment of rent by the tenant? Is the landlord entitled to a monetary claim for outstanding rent owed by the tenant?

Background and Evidence

This tenancy began on September 3, 2008 for the monthly rent of \$875.00 and a security deposit of \$437.50. The tenancy was originally a fixed term lease but has reverted to a month to month tenancy.

On February 5, 2009 the tenant was served with a 10 day Notice to End Tenancy due to non-payment of rent. Since that notice has been served the tenant has not paid the rent for March, April, May or June 2009, except for one payment of \$800.00 on February 18, 2009 and an \$800.00 payment on March 30, 2009. The tenant was provided receipts for these payments which indicated that the payments were received for "use and occupancy only".

The tenant indicated that she has been unable to pay the outstanding rent due to circumstances beyond her control. The landlord requested an Order of possession and monetary Order for the outstanding rent owed.

The tenant asked the landlord to reconsider reinstating the tenancy if she was able to pay the outstanding rent. The tenant did not dispute the 10 day Notice to End Tenancy.

Analysis and Findings

Pursuant to section 46(4) of the *Act* the tenant had five days to either pay the outstanding rent owed as of February 5, 2009, or to file an application to dispute the 10 day Notice to End Tenancy. 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*.

I accept the landlord's evidence that it was explained to the tenant that she must meet the arrangements to pay the outstanding rent and that any payments made did not reinstate the tenancy unless all the arrears were made in full. I find that this was supported by the landlord issuing receipts to the tenant which confirmed that the money was accepted for the "use and occupancy only".

I accept that the tenant has failed to pay the outstanding rent owed. While this may or may not be due to circumstances beyond the tenant's control, the landlord is entitled to an Order of Possession pursuant to section 46(5) of the *Act*.

I also find that the landlord has established a total monetary claim for the sum of \$2,946.00 including the recovery of the \$50.00 filling fee paid by the landlord for this application. From this sum I Order that the landlord may retain the tenant's security deposit plus interest of \$439.65 in partial satisfaction of this claim.

I grant the landlord a monetary Order for the remaining balance owed of **\$2,506.35**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The landlord indicated that she would consider reinstating the tenancy if the tenant was able to pay all the outstanding rental arrears before the effective date of the Order of Possession.

Conclusion

The landlord's application is granted and an Order of Possession and a monetary Order have been issued due to non-payment of rent by the tenant.

Dated June 18, 2009.

Dispute Resolution Officer