



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was convened as an in- person hearing in response to an application by the landlord pursuant to the *Residential Tenancy Act* for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security - Section 38
4. An Order to recover the filing fee for this application - Section 72.
5. An Order for loss of revenue for a future month – Section 67

Both parties were given a full opportunity to present evidence and make submissions. The parties were also given opportunity to discuss their dispute, as to their determination to attempt to resolve their issues. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The relevant evidence in this matter is as follows. Rent in the amount of \$600 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$300. The tenant failed to pay rent in the month of October and on October 11, 2010 the landlord served the tenant with a notice to end tenancy for non-payment of rent by posting it to the tenant's door - with an effective date of October 23, 2010. The tenant further failed to

pay rent in the month of November 2010. The landlord seeks an Order of Possession effective December 01, 2010. The sum of the landlord's monetary claim is \$1200, and for loss of revenue for December 2010 in the amount of \$600.

The tenant claims he has not paid the rent and has applied the rent towards a new, special order steel door – which the tenant claims is required as it was broken by his friend's girlfriend. The landlord did not hear of this issue until today's hearing and does not think he is obligated to repair the door and has not authorized the tenant to make the repairs if they are required. During the hearing the parties were permitted to discuss their matter with a view to a compromise - to no avail. The tenant claims he made an application in the first week of November, allegedly to dispute the landlord's Notice to End and obtain an Order for repairs, but that application was subsequently abandoned by the tenant.

Analysis

Based on the testimony of the landlord and the tenant, I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent, and does not have proof they have paid the rent, or an Order from a dispute Resolution Officer entitling the tenant to withhold rent, or that they withheld rent with prior notice to the landlord, for the cost of emergency repairs, and has not applied for Dispute Resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. The parties are further apprised of Section 26 of the Residential tenancy Act (the Act) which, in part, states as follows.

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the above facts I find that the landlord is entitled to an **Order of Possession**.

I find that the landlord has established a monetary claim for **\$1200**. The landlord is not entitled to, in this matter, claim loss of revenue for future rent. The landlord is also entitled to recovery of the **\$50** filing fee, for a total entitlement of **\$1250**. The security deposit will be off-set from the award.

Calculation for Monetary Order

Rental Arrears	\$1200.00
Filing Fees - cost of this application	50.00
Less Security Deposit and interest <i>to date</i>	-300.00
Total Monetary Award	\$950.00

Conclusion

I grant an Order of Possession to the landlord effective December 01, 2010. The tenant must be served with this **Order of Possession**. 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 order that the landlord retain the **deposit** of \$300 in partial satisfaction of the claim and I grant the landlord an order under Section 67 of the Act for the balance due of **\$950**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.