

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This is an application by the Landlord for an order of possession which results from a 10 day notice to end tenancy for unpaid rent, a request for a monetary order for unpaid rent and to keep all or part of the security deposit and the recovery of the filing fee.

Both parties appeared by conference call and gave affirmed testimony.

Issues(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

This tenancy began on September 1, 2010 on a fixed term tenancy for 12 months until September 1, 2011. The monthly rent is \$1,200.00 payable on the 1st of each month and a security deposit of \$600.00 was paid at the beginning of the tenancy.

The Landlord served the Tenant with the 10 day notice to end tenancy for unpaid rent on October 6, 2010 in person. The Landlord has provided a proof of service statement by a 3rd party witness with the notice. The Tenant states that she did not file for dispute resolution within the allowed 5 days as provided within the Act. The Landlord states that the hearing documents were served in person by Landlord's spouse on November 3, 2010 on the date that she picked up the package from the RTB. The Tenant confirms that she received the hearing document package along with the evidence attached.

The Landlord states that the October rent remains outstanding.

Analysis

The Landlord has properly served the 10 day notice to end tenancy for unpaid rent. The Tenant has chosen to not file an application for dispute resolution within the allowed 5 days under the Act.

Section 46 (1) A Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the Tenant receives the notice.

Section 46 (4) Within 5 days after receiving a notice under this section, the Tenant may (a) pay the overdue rent, in which case the notice has no effect, or (b) dispute the notice by making an application for dispute resolution.

Section 46 (5) If a Tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the Tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit to which the notice relates by that date.

Based upon the above facts, I am satisfied that the Landlord has properly served the Tenant with the hearing documents on November 3, 2010. I find that the Landlord is entitled to an order of possession. The Tenant must be served with the 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.

The Landlord has established a monetary claim for \$1,200.00 in unpaid rent. The Landlord is entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$600.00 security deposit in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$650.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted an order of possession and a monetary order for \$650.00.
The Landlord may retain the security deposit.

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*.

Dated: November 25, 2010.

Dispute Resolution Officer