



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, a monetary order for unpaid rent and recovery of the filing fee. Both parties participated in the conference call hearing and gave affirmed testimony.

Issues to be Decided

Is the landlord entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started on August 1, 2010 with monthly rent of \$2750.00, the tenant did not pay a security deposit. On October 5, 2010 the landlord served the tenant with a Notice to End Tenancy for Unpaid Rent.

The landlord testified that the tenant has not paid rent for the months of September and October and if the landlord's prospective new tenants sign a rental agreement, this agreement will start November 15. Total rent owing for the 2 months and one ½ month rent for November is \$5500.00. The tenant has since vacated the rental unit.

The landlord testified that the tenant signed a 6 month fixed term tenancy agreement. The landlord also stated that in the first month of tenancy the tenants rent cheque was returned NSF, the tenant then made efforts to pay the rent but had to do so in 2 instalments each month.

The tenant testified that he has paid September's rent and provided a copy of a certified cheque, the back of the cheque reflects that it has cleared through the bank, this cheque is for \$1375.00 or ½ of September's rent. The tenant stated that he believed this to be a commercial tenancy and was insistent that his situation did not fall under the Residential Tenancy Act. The tenant rented a house that is a residentially zoned property, slept and cooked his meals in the residence and signed a residential tenancy agreement and not a commercial lease with the landlord. The fact that the tenant used part of the residence for his business did in no way make this a commercial tenancy.



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Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent. While the tenant applied to dispute the notice, he acknowledged that rent is unpaid and owed to the landlord.

I find that the landlord has established a monetary claim for \$4125.00 in unpaid rent and \$1375.00 for ½ months lost rent. The landlord is also entitled to recovery of the \$50.00 filing fee.

As the tenant has vacated the rental unit the landlord's request for an order of possession is hereby dismissed.

Conclusion

I find that the landlord has established a monetary claim for \$5500.00. The landlord is also entitled to recovery of the \$50.00 filing fee bringing the total monetary claim to \$5550.00.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$5550.00**. If the amount is not paid by the tenant, the order may be filed in the Provincial (Small Claims) Court of British Columbia 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*.

Dated: November 5, 2010

Dispute Resolution Officer