



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPR, MNR,

Introduction

This matter was originally made by way of Direct Request Proceeding, which was adjourned to a participatory Hearing. This the Landlord's application for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that he mailed the Notice of Hearing documents to the Tenant at the rental unit, by registered mail, on November 24, 2010. The Landlord provided the registered mail receipt and tracking number in evidence. The Landlord testified that the documents were returned to him, refused by the Tenant.

I accept the Landlord's affirmed testimony and documentary evidence that he served the Tenant with the Notice of Hearing Package in accordance with the provisions of Section 89(2)(c) of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents, whether or not the Tenant chooses to accept delivery. In spite of being served with the documents, the Tenant did not appear at today's Hearing and the Hearing proceeded in her absence.

The Landlord testified that he also mailed copies of his evidence to the Tenant at the rental unit, by registered mail, on November 15, 2010. The Landlord provided the registered mail receipt and tracking number in evidence.

Issue(s) to be Decided

- (1) Is the Landlord entitled to an Order of Possession?

- (2) Is the Landlord entitled to a monetary order for unpaid rent for the month of November?

Background and Evidence

The Landlord testified that he served the Notice to End Tenancy issued November 3, 2010, by posting the Notice on the Tenant's door on November 3, 2010. The Landlord provided a Proof of Service Document in evidence which was signed by a witness.

The tenancy began on October 7, 2010. A copy of the tenancy agreement was entered in evidence. Monthly rent is \$1,495.00 per month, due on the 31'st day of each month. The Tenant paid a security deposit in the amount of \$800.00 at the beginning of the tenancy. The Tenant has not paid any rent for the months of November or December, 2010. The Tenant remains in the rental unit.

The Landlord asked for a monetary award for loss of rent for the month of December, 2010, and to apply the security deposit in partial satisfaction of his monetary award.

Analysis

I accept the Landlord's testimony that the Tenant was duly served with the Notice to End Tenancy. Service by posting a document is deemed effective 3 days after posting. The Tenant did not pay the rental arrears or dispute the Notice to End Tenancy within 5 days of being served with the Notice to End Tenancy. Pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. In this case, the effective end to the tenancy was November 16, 2010.

Therefore, the Landlord is entitled to an Order of Possession and I make that order **effective 2 days after service of the Order upon the Tenant.**

I grant the Landlord's application for an award for loss of rent for the month of December, 2010, and amend the Landlord's application to include a claim for loss of rent. Based on the undisputed testimony of the Landlord, and the absence of any evidence to the contrary from the Tenant, the Landlord has established his claim, as follows:

Unpaid rent for November, 2010	\$1,495.00
Loss of rent for December, 2010	<u>\$1,495.00</u>
TOTAL:	\$2,990.00

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit in partial satisfaction of his monetary claim. No interest has accrued on the security deposit.

I hereby provide the Landlord with a monetary order against the Tenant, calculated as follows:

Rent arrears and loss of rent	\$2,990.00
Less security deposit	<u><\$800.00></u>
TOTAL amount due to Landlord after set off	\$2,190.00
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Conclusion

I hereby provide the Landlord an Order of Possession **effective two days from service of the Order upon the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$2,190.00** against the Tenant. This Order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) 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: December 10, 2010.
