



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

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 unpaid rent by the tenant and sub-tenant. The landlord and an occupant of the rental unit appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

An agent for the occupant requested an adjournment of the hearing arguing that the occupant had a medical appointment and could not remain for the hearing. However, the occupant failed to request an adjournment in accordance with the rules of procedure, which require notice be received least 3 days before the hearing and the occupant failed to provide any evidence to substantiate the claim that she could not attend or proceed with the hearing due to a medical condition.

Because the issue before me deals with non-payment of rent, it would be very unfair to the landlord to adjourn the hearing in the absence of persuasive evidence to support the occupant's situation. Therefore, I denied the occupant's request and proceeded with the hearing.

At the request of the occupant's agent, I called the occupant into the conference call.

Issue(s) to be Decided

Did the tenant fail to pay rent entitling the landlord to an Order of Possession and a monetary claim?

Background and Evidence

The landlord and the tenant entered into a tenancy agreement on June 1, 2010 for the monthly rent of \$850.00 and a \$425.00 security deposit was paid on May 22, 2010. The occupant submits that she took over the tenancy in August 2010 and that the landlord was aware of this. The landlord denies granting permission for the assignment of the tenancy or entering into a tenancy agreement with the occupant.

The occupant argued that she withheld rent in November 2010 because the landlord is not providing a rental unit which meets health and safety standards. The occupant

stated that the hydro has been shut off and she was unaware that she was required to pay the hydro bill. As a result there is no allegedly no heat in the rental unit.

The landlord submits that the tenant has failed to pay the rent owed of \$850.00 for the months of November and December 2010 and for January 2011 for the amount of \$2,550.00.

The tenant did not dispute that a 10 day Notice to End Tenancy Due to Unpaid Rent which had been served upon her when it was posted to the door of the rental unit.

Analysis

Based on the evidence before me and on the balance of probabilities, I find as follows:

I find that the tenant has not ended the tenancy in accordance with section 45 of the *Act* and I find that the tenant has not assigned the tenancy agreement in accordance with section 34 of the *Act*. Although the landlord appears to have accepted a rent payment from the occupant in October 2010, I am satisfied that the landlord never entered into a tenancy agreement with the occupant.

I am satisfied that the tenant has failed to pay the rent owed for the months of November and December 2010 and for January 2011. I deem the tenant as having been served with the 10 day Notice to End Tenancy Due to Unpaid Rent on the 3rd day after it was posted to the door of the rental unit on December 2, 2010. The tenant had 5 days to either pay the outstanding rent or to file an application to dispute the notice from December 5, 2010. The tenant failed to exercise either of these rights.

Pursuant to section 46(5) of the *Act*, I find that the tenant has conclusively accepted the end of the tenancy agreement effective December 15, 2010 and on this basis I grant the landlord's application seeking an Order of Possession for the rental unit.

The occupant of the rental unit has no rights or obligations under the *Act*.

Conclusion

I find that the landlord is entitled to an Order of Possession of the rental unit effective **two (2) days** after it has been served upon the tenant. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.



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I find that the landlord has established a monetary claim due to breach of the tenancy agreement by the tenant for the sum of **\$2,550.00**. This Order must be served on the tenant. This Order may be filed with the Province of British Columbia 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*.

Dated: January 11, 2011.

Residential Tenancy Branch