



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and damage or loss under the Act, regulations or tenancy agreement. The tenant did not appear at the hearing. The landlord testified the tenant was served with the hearing documents via registered mail sent to the rental unit on December 17, 2010. The landlord provided a registered mail tracking number as proof of service.

The landlord testified that yesterday the tenant returned the keys to the landlord and stated that she had vacated the rental unit. The landlord has not been able to verify this information and requested the Order of Possession be provided in the event the tenant has not vacated.

I was satisfied the tenant has been served with the hearing documents via registered mail and I proceeded to hear from the landlord without the tenant present.

The landlord also requested that the application be amended to include a request to retain the security deposit in partial satisfaction of the rent owed. I found this request did not prejudice the tenant and this request for amendment was granted.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to compensation for unpaid rent and loss of rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The landlord provided the following undisputed evidence. The tenancy commenced August 1, 2010 on a month to month basis. The tenant paid a \$500.00 security deposit. The tenant was required to pay rent of \$995.00 on the 1st day of every month. The tenant paid only a portion of rent for November 2010 and did not pay rent for December 2010. On December 4, 2010 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door. The Notice indicates that \$1,490.00 was outstanding for November and December 2010 and has an effective date of December



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14, 2010. The tenant did not pay the outstanding rent and continued to reside in the rental unit.

In making this application the landlord is seeking to recover unpaid rent for November and December 2010 in the amount of \$1,490.00 and loss of rent of \$995.00 for January 2011.

Provided as documentary evidence was a copy of the tenancy agreement, the Notice, and proof of service of the Notice.

Analysis

Where a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent or dispute the Notice. Otherwise, the tenant is conclusively presumed to have accepted the Notice and must vacate the rental unit by the effective date. I am satisfied the landlord served the tenant with a 10 Day Notice and the tenant did not pay the outstanding rent or dispute the Notice. Since the Notice was posted on the door it is deemed to be received three days later and effective date automatically changes to read December 17, 2010 in accordance with section 53 of the Act. Accordingly, I find the tenancy ended December 17, 2010.

The landlord was informed that upon vacating the rental unit the landlord automatically regains possession of the rental unit; however, since the tenant may still be in possession of the rental unit I provide the landlord with an Order of Possession effective two days after service upon the tenant. The Order of Possession may be enforced in the Supreme Court of British Columbia as an Order of that court.

I am satisfied that the landlord is entitled to recover unpaid rent of \$1,490.00 from the tenant for the months of November and December 2010 and loss of rent of \$995.00 for the month of January 2011.

As the landlord was successful with this application, I also award the filing fee to the landlord. The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the rent owed by the tenant.

I provide for the landlord with this decision a Monetary Order calculated as follows:

Unpaid rent – November and December 2010	\$ 1,490.00
Loss of rent – January 2011	995.00
Filing fee	50.00
Less: security deposit	(500.00)
Monetary Order	<u>\$ 2,035.00</u>



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The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord has been authorized to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord and is provided a Monetary Order for the balance of \$2,035.00 to serve upon the tenant.

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 12, 2011.

Residential Tenancy Branch