



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with an application by the landlord for an Order of Possession for unpaid rent or utilities; a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for order permitting the landlord to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenant for the cost of this application.

Despite having been served with the application for dispute resolution and notice of hearing personally on December 17, 2010, the tenant did not participate in the conference call hearing. The landlord attended the hearing, gave affirmed testimony and provided evidence in advance of the hearing. All testimony and evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
Is the landlord entitled to a monetary order for unpaid rent or utilities?
Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This month-to-month tenancy began on November 1, 2006 and the tenant still resides in the rental unit. Rent in the amount of \$929.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$400.00.

The landlord testified that the tenant is continuously late paying the rent. He stated that in September, 2010 the tenant paid by installments, and provided 2 worksheets showing that \$400.00 was paid on September 2, \$200.00 on September 22 and \$349.00 on September 26, 2010. On September 4, 2010 the landlord credited the tenant's account

by \$29.00 for work completed by the tenant for the landlord. Also, the landlord charged the tenant \$20.00 for overdue payments, although the tenancy agreement does not contain an agreement that the landlord would be permitted to collect a late fee.

For the month of October, 2010, the tenant paid \$400.00 on October 2 and \$340.00 on October 3, 2010, leaving a balance of \$189.00 outstanding.

In November, 2010, the tenant paid \$600.00 on November 3, 2010 and the landlord deducted \$29.00 for work that the tenant had completed for the landlord, leaving a balance outstanding of \$300.00.

The tenant failed to pay rent in the months of December, 2010 and on December 10, 2010 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the month of January, 2011.

Analysis

Based on the landlord's testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant has not paid the outstanding rent and has not applied for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

As for the monetary order, based on the landlord's testimony and documentation provided, I find that the landlord has established a claim for \$2,298.00 in unpaid rent, calculated as follows:

Date	Amount Due	Amount Paid	Balance Due	Comments
September 1, 2010	\$929.00	0	\$929.00	
September 2		\$400.00	\$529.00	
September 22		\$200.00	\$329.00	
September 26		\$349.00	(20.00)	
September 30		\$29.00	(49.00)	Credit for work done
October 1, 2010	\$929.00	0	\$880.00	
October 2		\$400.00	\$480.00	
October 3		\$340.00	\$140.00	

November 1, 2010	\$929.00	0	\$1,069.00	
November 3		\$600.00	\$569.00	
November 30		\$29.00	\$440.00	Credit for work done
December 1, 2010	\$929.00	0	\$1,369.00	
January 1, 2011	\$929.00	0	\$2,298.00	

The landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

Based on the above facts 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.

I order that the landlord retain the security deposit and interest of \$412.45 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,935.55. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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 14, 2011.

Residential Tenancy Branch