



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, and to recover the filing fees associated with this application.

The landlord participated in the hearing by calling into the conference call. The tenant participated by appearing in person. Both parties provided affirmed testimony and presented documentary and oral evidence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and for what amount?

Background and Evidence

The rental unit consists of a detached family home on an acreage located in Aldergrove. Pursuant to a written agreement, the tenancy began in October 1983 with the current tenants' parents. J.K. took over the tenancy when her parents passed away. At present the month to month rent is \$1395.00 payable on the first of each month.

The landlord testified that the tenant did not fill out the correct information on the November 2010 rent cheque and as a consequence the cheque was returned to the tenant. The tenant argued that a new cheque was sent mid December but the landlord testified that it was never received.

The landlord stated that the December 2010 rent cheque was returned NSF (non-sufficient funds). By way of a letter sent registered mail on December 8th, 2010, the landlord said that the tenant was served with the 10 Day Notice to End Tenancy dated December 7th, in which the landlord also notified the tenant that the rent for November and December was still outstanding. The landlord, who provided copies of Canada Post registered tracking information, said that the letter in question was picked up by the tenant on December 24th, 2010.

The tenant said that she is in a position to pay the outstanding rent today. She stated that lingering effects of an accident last summer prevent her from driving and that she relies on friends to fulfill her obligations towards the landlord on time. The landlord produced documentary evidence of the tenant's pattern of late rent payments since 2004. She said that the tenant's timeline to pay the rent in this matter has expired and that she wants the application for an Order of Possession to remain in effect.

The landlord's updated monetary claim is as follows:

- | | |
|----------------------------------|-----------|
| - Unpaid rent for November 2010: | \$1395.00 |
| - Unpaid rent for December 2010: | \$1395.00 |
| - NSF bank fee: | \$ 25.00 |
| - Total: | \$2815.00 |

Analysis

Based on the available evidence, I am satisfied that; the rent for November and December 2010 remains outstanding; that the landlord served the tenant with proper notice according to statute; and that the tenant was aware of the late rent since December 24th, 2010, and has not compensated the landlord by the date of the hearing.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution and has not paid the rent yet. While I sympathize with the tenant's medical predicament, I find that it does not mitigate her statutory obligations towards the landlord. Accordingly, pursuant to the Act find that the landlord is entitled to an Order of Possession and a Monetary Order.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the Order is served upon the tenant.

If necessary, This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord has established a claim for \$2815.00. Since the landlord was successful, I award the landlord the recovery of the \$50.00 filing fee for this application. Pursuant to Section 67 of the Act, I award the landlord a Monetary Order for the sum of \$2865.00.

This Order may be registered in the 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 17, 2011.

Residential Tenancy Branch