



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 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 or utilities and to keep all or part of the security deposit; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. M.M., the tenant's mother, appeared on her son's behalf and testified that she had full knowledge of the circumstances behind this dispute. The parties were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

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

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a one bedroom apartment in a multi unit complex.

Pursuant to a written agreement, the month to month tenancy started on April 2nd, 2010. The monthly rent of \$775.00 was payable on the first of each month. The tenant paid a security deposit in the amount of \$387.50.

It was not disputed that as of the date of the hearing, the tenant still owed \$373.00 for unpaid rent. The landlord testified that the tenant had a history of paying rent late, and that the tenant paid \$225.00 towards February 2011 rent after being served with the 10 Day Notice to End Tenancy. M.M. testified that the arrears can be paid over a period of 3 weeks and that her son gave the landlord notice to end the tenancy on March 31st, 2011. The tenant claims that the landlord's application is a personal vendetta over unrelated matters with the tenant's father.

The landlord made an oral request for an order of possession, and amended her monetary claim to \$373.00.

Analysis

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. Accordingly, I find that the notice is valid and that the landlord is entitled to an order of Possession. Based on the evidence and the parties' testimony, I also find that the landlord is entitled to a monetary order.

Conclusion

I grant the landlord an Order of Possession effective 2 days from the date the Order is served upon the tenant. 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 of \$373.00. I authorize the landlord to retain that sum from the tenant's \$387.50 security deposit, leaving a balance of \$14.50. Since she was successful, I award the landlord recovery of the \$50.00 filing fee. Accordingly, Pursuant to Section 67 of the Act, I grant the landlord a monetary order of \$35.50. If necessary, 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: February 22, 2011.

Residential Tenancy Branch