



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 the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and other fees; authorization to retain the security deposit and recovery of the filing fee. The tenant did not appear at the hearing. The landlord testified that he personally served the hearing documents upon the tenant on January 18, 2011 at the rental unit. Based upon the landlord's undisputed testimony, I accepted that the tenant was sufficiently served with notice of this hearing and I proceeded to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord entitled to compensation for late fees and NSF fees?
4. Is the landlord entitled to retain all or part of the tenant's security deposit?

Background and Evidence

The landlord provided the following undisputed testimony. The tenancy commenced September 1, 2010 and the tenant paid a \$380.00 security deposit. The tenant is required to pay rent of \$760.00 on the 1st day of every month. On January 7, 2011 the tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant paid \$590.00 of the outstanding rent the day before this hearing.

I noted that the landlord had provided copies of two 10 Day Notice to End Tenancy. One Notice was dated January 3, 2011 and indicated rent of \$1,175.00 was outstanding as of January 1, 2011. The second Notice was dated January 7, 2011 and indicated rent of \$760.00 was outstanding as of January 1, 2011. Upon enquiry, the landlord indicated that the former manager erred in issuing multiple Notices. The landlord further stated that the tenant did not pay \$415.00 of the rent owed for December 2010.

In making this application, the landlord requested compensation of \$1,275.00 including an NSF charge and late charge of \$25.00 each and the filing fee.

The landlord's documentary evidence included copies of the two Notices to End Tenancy dated January 3, 2011 and January 7, 2011 and the tenancy agreement.

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. Based upon the landlord's undisputed testimony, I am satisfied the landlord served the tenant with a 10 Day Notice on January 7, 2011 and the tenant did not pay the outstanding rent or dispute the Notice within five days. Accordingly, I find the tenancy ended January 17, 2011.

Since the tenant continues to occupy the rental unit the landlord is entitled to an Order of Possession. With this decision I provide the landlord with an Order of Possession effective two days after service of the Order of Possession upon the tenant. The Order of Possession may also be enforced in the Supreme Court of British Columbia as an Order of that court.

In the absence of a ledger or a copy of a returned cheque, and given the issuance of two Notices to End Tenancy for the same month, I find the landlord has not satisfied me that the tenant owes rent for December 2010 or entitled to recover an NSF fee from the tenant. I am satisfied me that the tenant owes rent for the month of January 2011 and the landlord is entitled to a late fee of \$25.00 for January 2011. I also award the filing fee to the landlord.

Taking into account the payment received yesterday I calculate the following monetary award to the landlord.

Unpaid rent – January 2011	\$ 760.00
Late fee	25.00
Filing fee	50.00
Less: partial payment	<u>(590.00)</u>
Monetary Award to landlord	\$ 245.00

The landlord is authorized to retain \$245.00 from the tenant's security deposit in satisfaction of the amount awarded to the landlord with this decision. The balance of

the security deposit remains in trust, to be administered in accordance with the requirements of the Act.

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is authorized to deduct \$245.00 from the tenant's security deposit in satisfaction of the amounts awarded to the landlord.

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 01, 2011.

Residential Tenancy Branch