



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 fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They 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 recover the filing fee?

Background and Evidence

The rental unit consists of a townhouse. Pursuant to a written agreement, the fixed term tenancy was based on a one year lease starting on December 1st, 2008. On November 30th, 2009 the tenancy continued month to month at a rate of \$1451.00 payable on the first of each month. The tenant paid a security deposit in the amount of \$700.00.

The landlord testified that the tenant is in arrears by three months for unpaid rent. In his documentary evidence the landlord submitted in part a monetary claim as follows:

- Unpaid rent for January 2011: \$1043.00
- Unpaid rent for February 2011: \$1451.00
- Unpaid rent for March 2011: \$1451.00
- Total: \$3945.00

The landlord served the tenant by way of registered mail a 10 Day Notice to End Tenancy effective February 24th, 2011.

The tenant did not dispute the evidence; she testified that she has encountered financial difficulties and that she is attempting to repay the full amount. The landlord was not amenable to a settlement and maintained the same position concerning the remedies sought in his application.

Analysis

Section 26(1) of the *Residential Tenancy Act* specifies in part that a tenant must pay the rent when it is due.

Section 46(5) of the Act also 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.

Based on the undisputed evidence and the parties' oral testimony I find that the landlord is entitled to an order of possession and a monetary order as claimed.

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 established a claim of \$3945.00. Since he was successful the landlord is entitled to recover the \$50.00 filing fee for a claim totalling \$3995.00. I authorize the landlord to keep the tenant's \$700.00 security deposit and pursuant to Section 67 of the Act I grant the landlord a monetary order for the balance of \$3295.00.

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: March 16, 2011.

Residential Tenancy Branch