



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to keep the security deposit; 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 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 fixed term tenancy started on August 1st, 2010 for one year. Rent was \$824.00 payable on the first of each month, and the tenants paid a security deposit in the amount of \$399.50.

M.H., the landlord's agent, testified that to date the tenants continue to owe \$74.00 for unpaid rent. She stated that because of other problems with the tenancy, including complaints from neighbouring tenants in the complex, the landlord has not changed his position concerning the order of possession.

Tenant T.W. did not deny owing rent, nor did he deny other problems and complaints from neighbours. On behalf of tenant M.C., T.W. submitted mitigating circumstances and stated that the landlord's concerns were being resolved.

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 tenants in this matter have not filed an application for dispute resolution. Nor did I find that T.W.'s submissions were factors that mitigated the tenants' obligation to comply with the Act.

On that basis I find that the landlord is entitled to an Order of Possession and a monetary order for unpaid rent.

Conclusion

I grant the landlord an Order of Possession effective two 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.

Since he was successful, the landlord is entitled to recover the filing fee. Pursuant to Section 38(4) of the Act, I award the landlord the sum of \$124.00 which the landlord is authorized to deduct from the tenants' security deposit.

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: April 01, 2011.

Residential Tenancy Branch