



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This Hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security / pet deposit - Section 38
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

The landlord’s application named two persons as Tenants, of which only the first named person is on the lease agreement as a Tenant. The Landlord stated at the Hearing that the second named person was living with the Tenant for a brief time and paid part of the rent for at least one month but was not added to a lease agreement. As this second named person has no rights or obligations under the Act, regulation or tenancy agreement, he cannot be considered as a party to the dispute, and I dismiss the application in relation to the second named Tenant.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on July 2001. Rent in the amount of \$850.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$425.00. The Tenant failed to pay rent for the months of February and March 2011 and on March 8, 2011 the Landlord personally served the Tenant with a notice to end tenancy for non-payment of rent. The Tenant was also in arrears for January 2011 rent in the amount of \$425.00. The Tenant did not file an Application for Dispute Resolution and moved out of the unit on March 11, 2011 but left his furniture and did not return the keys to the Landlord. The Tenant also picked up his mail at the unit to the end of March 2011. In addition to rental arrears for January, February and March 2011, the Landlord claims lost rental income for April 2011. The quantum of the Landlord's monetary claim is **\$2,125.00**.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's testimony I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has

not paid the outstanding rent and has not applied for Dispute Resolution to dispute the notice. The Tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

Given the above facts, I find that the Landlord is entitled to an **Order of Possession**.

Section 44 of the Act sets out when a tenancy will end. Where a Landlord has elected to end a tenancy because of non-payment of rent, a tenant is not liable to pay rent after the tenancy agreement has ended pursuant to section 44. If however, the tenant remains in possession of the premises, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. The Landlord in this case has elected to end the tenancy agreement for non-payment of rent by serving a 10 day notice to end tenancy with a move-out date of March 16, 2011. As such, the Tenant is liable for rent to that date or until the Landlord regains possession. Since the Tenant has not returned the keys or removed his furniture, I find that the Tenant is liable for rent to April 15, 2011 and that the Landlord has established and is eligible for the amount of **\$2,550.00**.

The Landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$2,600.00**. The **security deposit** will be off-set from the award made herein.

Calculation for Monetary Order

Rental Arrears	\$2,550.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and interest <i>to date</i>	-446.71
Total Monetary Award	\$2,153.29

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I Order that the Landlord retain the **deposit** and interest of \$446.71 in partial satisfaction of the claim and I grant the Landlord an Order under Section 67 of the Act for the balance due of **\$2,153.29**. If necessary, this Order may be filed 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: April 08, 2011.

Residential Tenancy Branch