



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 recover the filing fee for this application - Section 72.

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

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 January 1, 2003. Rent in the amount of \$706.00 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 \$345.00. The Tenant failed to pay rent for the month of May 2011 and on May 6, 2011 the Landlord served the Tenant, by registered mail, a notice to end tenancy for non-payment of rent. The Tenant did not pay the rent within 5 days of receiving the Notice and information on the file indicates that the Tenant has not filed an Application for Dispute Resolution. The Landlord claims \$1,013.00 representing \$706.00 for unpaid May rent, \$265.00 in arrears from January 2007 and \$42.00 for an NSF charge relating to the May 2011 rent cheque. The Landlord provided a copy of a lease agreement that provides that NSF

cheques are subject to a \$25.00 penalty, or the current rate charged by the Bank, whichever is more, and a signed addendum to the lease that notes NSF cheques are subject to a \$25.00 penalty. The Landlord states that the Tenant did not vacate the unit pursuant to the effective date of the Notice and further claims unpaid rent for June 2011 in the amount of \$706.00.

The Tenant states that May rent was unpaid due to the Landlord's threat to use his security deposit against damages caused by a third party. The Tenant further states that the arrears the Landlord states are from January 2007 were only \$190.00 and that he has a cancelled cheque dated January 1, 2007 and numbered 277 that notes these arrears were paid in full. The Tenant states that these arrears were paid out prior to the new Landlords taking over and that the new Landlords have made a mess of things. It is noted that the Landlord took several minutes to figure out the exact amount of arrears and had to call in an accountant during the hearing, to help sort out the numbers in order to clearly identify the amounts being claimed at the hearing.

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**.

Given the Tenant's evidence in relation to the arrears, I find that the Landlord has not proven on a balance of probabilities that these arrears remained outstanding after January 2007 and I dismiss this part of the Landlord's claim. Given the terms of the lease agreement, I find that the Landlord has not substantiated the claim for an amount greater than \$25.00 for the N.S.F. charge on May 2011 rent cheque return. I find that the Landlord has established a monetary claim for unpaid rent for May and June 2011 plus the amount of \$25.00 for the N.S.F. charge, for a total award of \$1,380.00. The Landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$1,455.00.**

The **security deposit** will be off-set from the award made herein.

Calculation for Monetary Order

Rental Arrears (May 2011)	\$690.00
Rental arrears (June 2011)	690.00
N.S.F. charge	25.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and interest <i>to date</i>	-357.20
Total Monetary Award	\$1,097.80

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 \$357.20 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,097.80**. 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: June 27, 2011.

Residential Tenancy Branch