



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: OPR, CNR, MNR, FF

Introduction

This hearing dealt with 2 applications: i) by the landlord for an order of possession / a monetary order as compensation for unpaid rent / and recovery of the filing fee; ii) by the tenant for cancellation of a notice to end tenancy / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether either party is entitled to any of the above under the Act

Background / Evidence / Analysis

Pursuant to a written tenancy agreement, the fixed term of tenancy is from July 1, 2010 to July 1, 2011. Monthly rent is \$1,025.00, and is payable in advance on the first day of each month. A security deposit of \$512.50 was collected at the start of tenancy.

The tenant acknowledged that she is frequently behind in her payment of rent, and that she makes installment payments to the onsite manager. Further, the tenant testified that she does not keep a record of her payments. The record of receipts for rent is a combination of receipts photocopied by the landlord's agent, and original receipts submitted by the tenant. The receipts submitted by the parties match in some cases, and not in others. In short, there is no statement of the status of unpaid rent in evidence which reflects a month-to-month contemporaneous calculation.

In consideration of a pattern of installment payments, and in view of the incomplete and inconsistent sets of receipts in evidence, I find on a balance of probabilities that rent has been paid in full to the end of November 2010, and that the status of rent subsequent to that time is as follows:

	<u>OWED</u>	<u>PAID</u>
<u>December 2010:</u>	\$1,025.00	\$740.00

<u>January 2011:</u>	\$1,025.00	\$1,095.00

<u>February 2011:</u>	\$1,025.00	\$945.00
<u>March 2011:</u>	\$1,025.00	\$800.00
<u>April 2011:</u>	\$1,025.00	\$1,300.00
<u>May 2011:</u>	\$1,025.00	\$740.00
<u>June 2011:</u>	\$1,025.00	\$400.00
<u>Total Due:</u>	<u>\$7,175.00</u>	<u>Total Paid: \$6,020.00</u>

Balance of rent currently owed: **\$1,155.00** (\$7,175.00 - \$6,020.00)

It is understood that the most recent 10 day notice to end tenancy for unpaid rent is dated June 2, 2011, and that the tenant's installment payment toward rent in June is limited to \$400.00 on June 1, 2011.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated June 2, 2011. While the tenant filed an application to dispute the notice within 5 days of receiving the notice, she did not pay the full amount of rent outstanding within 5 days of receiving the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim of \$1,205.00. This is comprised of \$1,155.00 in unpaid rent, as detailed above, in addition to the \$50.00 filing fee. The landlord has not made an application to retain the security deposit.

Following from all of the above, the tenant's application to cancel the landlord's notice to end tenancy is hereby dismissed, as is the tenant's application to recover the filing fee.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,205.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is hereby dismissed.

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*.

DATE: June 27, 2011

Residential Tenancy Branch