



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This tenancy began October 1, 2010 with monthly rent of \$840.00, \$20.00 for parking with the first 6 months of parking free. On May 13, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant has not paid the outstanding rent and did not file an application to dispute the Notice.

At the start of the hearing the landlord per section 64 (3) (c) of the *Act* amended their application to correct the landlord name and contact information. The landlord stated that all tenants had been made aware of the change in property management.

Dispute resolution proceedings generally

(3) Subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may

(c) amend an application for dispute resolution or permit an application for dispute resolution to be amended.

The landlord testified that the tenant has not paid the May or June 2011 rent and currently owes the landlord \$1720.00 in unpaid rent. The tenant testified that he had the rent money but that his girlfriend had had him arrested and she had taken and kept his rent money. The tenant stated that a few days later he got laid off and he is now waiting for his first cheques to arrive from unemployment assistance. The tenant stated that he wanted to pay the rent but that if he could not and he had to leave he would do so.

The tenant was adamant that he had been paying \$860.00 since the beginning of the tenancy and as a result overpaid the rent by \$120.00 for the 6 months free parking. Neither the tenant nor landlord at this time has documentation to uphold or refute this claim of overpayment of rent.

The landlord expressed concern that the rent would not be paid as there is a history of rent being paid late every month for the past 5 months. The landlord stated that she is willing to allow the tenant until June 30, 2011 to pay the rent in full and allow the tenancy to continue. However if the rent is not paid in FULL by June 30, 2011 the landlord will enforce their order of possession dated for that date.

The tenant understood that he had until June 30, 2011 to pay the rent in full or he must vacate the rental unit by 1:00PM on that day.

The landlord in this application is seeking \$1720.00 compensation for unpaid rent and parking and an order of possession effective June 30, 2011 at 1:00PM.

Analysis

Based on the documentary evidence and testimony I find that the tenant was properly served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession and a monetary order for unpaid rent.

As the overpayment of rent for free parking cannot be substantiated by either party at this time, the amount of \$120.00 will be deducted from the landlord's \$1720.00 claim. If in the future the landlord can provide records that the tenant has not overpaid the rent, the landlord may file for dispute resolution to claim this \$120.00.

I find that the landlord has established a claim for \$1600.00 in unpaid rent.

The landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I hereby grant the landlord an **Order of Possession** effective not later than **1:00 PM, June 30, 2011**. This Order must be served on the tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim for \$1600.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$430.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$1220.00**.

If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 21, 2011.

Residential Tenancy Branch