



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent. The landlord also seeks an Order to keep all or part of the security deposit and to recover the cost of the filing fee. The landlords' agents withdrew the landlords' application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, and the landlords' agent testifies that she personally served the tenant with the hearing documents on May 06, 2011.

The landlords agents appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to recover unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

The landlords' agents declare that this month to month tenancy started on December 01, 2010. Rent for this unit is \$1,500.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$750.00 on November 10, 2010.

The landlords' agent testifies that the tenant was served with a One Month Notice to End tenancy on April 22, 2011 in person. This Notice has an effective date of May 31, 2011 and sighted the reason in accordance with s. 47(1)(k) of the Act:

The rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

The second page of the Notice provides information to the tenant on how to dispute the notice within 10 days of receiving it or she would be presumed to have accepted that the tenancy ends on the effective date of the Notice.

The landlords' agent testifies that the tenant refused to pay rent for May, 2011 and they also served her with a 10 Day Notice to End Tenancy on May 01, 2011. The landlords' agent testifies that the tenant may have moved from the rental unit but they have not been able to gain access to the unit at this time to confirm this and the tenant has not returned the keys to the unit.

The landlord seeks an Order of possession to take effect as soon as possible this order will be served to the tenant in the event she has not vacated the rental unit.

The landlord also seeks to recover unpaid rent for May, 2011 and a loss of rental income for June, 2011. The landlord seeks an Order to keep the tenants security deposit to offset against unpaid rent.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

When a landlord serves a tenant with a One Month Notice to End Tenancy; page two of that Notice provided information for the tenant about how to dispute the Notice by applying for Dispute Resolution within 10 days of receiving the Notice. The tenant was personally served with this Notice on April 22, 2011 and therefore she had until May 02, 2011 to dispute the Notice. As the tenant has not disputed the Notice, and I find the Notice is a valid document, the tenant is presumed to have accepted the Notice and must move from the rental unit on the effective date of the Notice. Consequently, the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*.

With regards to the landlords claim for unpaid rent for May, 2011 I refer the tenant to s. 26 of the *Act* which states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

As the tenant has not shown any reason why she withhold rent for May, 2011 I find the landlord has established his claim to recover rent for May, 2011 from the tenant and will receive a monetary award for the sum of **\$1,500.00**.

With regard to a loss of rental income for June, 2011 as the tenant has not returned the keys to the landlord or given the landlord an indication that she has moved from the rental unit I find the landlord is entitled to a monetary award to recover rent for June, 2011. However, as it is still the beginning of the month and the landlord has an obligation under the *Act* to mitigate any losses by trying to re-rent the unit as soon as possible it is my decision that the landlord is entitled to a monetary award for half the monthly rent for June, 2011 to the sum of **\$750.00**. In the event the unit is not re-rented before the end of June, 2011 the landlord is at liberty to reapply for the remainder of Junes rent.

I Order the landlord to keep the security deposit of \$750.00 pursuant to s. 38(4)(b) and this sum will be offset against unpaid rent.

As the landlord has been partially successful with his claim I find he is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1). A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for May, 2011	\$1,500.00
Subtotal	\$2,250.00
Less security deposit	(-\$750.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$1,550.00

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service** on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,550.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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 03, 2011.

Residential Tenancy Branch