



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for unpaid rent; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a three bedroom apartment in a multi unit complex. The landlord testified that pursuant to a written agreement, the month to month tenancy started on March 1st, 2011.

He stated that rent is \$1200.00 per month and that the tenant paid a security deposit of \$400.00. He said that the tenant has only been paying \$800.00 instead of \$1200.00, which put the tenant in arrears of \$1600.00 until the end of July, and that the tenant did not pay rent for August for a monetary claim totalling \$2800.00. In his documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy he served on the tenant in person on July 8th, 2011, with an effective date of July 18th, 2011.

The tenant testified that the tenancy agreement states that her agreed upon portion of the rent is \$800.00 as long as she only used 2 of the 3 bedrooms. She stated that she made it clear to the landlord at the start of the tenancy that she could not afford \$1200.00, and that the Ministry of Social Services is paying rent directly to the landlord. She said that rent for August 2011 was not paid because she did not know what would be the outcome of this dispute. She confirmed receipt of the Notice to End Tenancy dated July 8th, 2011.

The landlord said that the tenant's boyfriend moved into the apartment, which the tenant denied. The parties had an opportunity to cross examine each other; however their exchange became argumentative and their testimony remained at complete odds.

Analysis

The landlord bears the burden to establish sufficient proof, on the balance of probabilities, for ending the tenancy. The landlord did not provide a copy of the tenancy agreement with his evidence. Nor did he provide business-like records that a landlord would be expected to maintain, such as any ledgers, accounting books, or rental receipts.

Concerning ending the tenancy: Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution. Therefore the landlord is entitled to an Order of Possession.

Concerning the landlord's claim for unpaid rent; I find that the landlord has provided insufficient information to show on the balance of probabilities that the tenant is in arrears. The tenant stated that rent for August was not paid. I note that the tenant's security deposit of \$400.00 represents half of what the monthly rent of \$800.00 would be, as claimed by the tenant. In the absence of more substantive evidence I find the landlord entitled to recover unpaid rent of \$800.00 for August 2011.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I authorize the landlord to retain the tenant's \$400.00 security deposit for a balance owing of \$400.00. Since the landlord was partially successful, I award the landlord partial recovery of the filing fee for \$25.00. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$425.00.

This Order may be registered 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: August 22, 2011.

Residential Tenancy Branch