



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, 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. A Monetary Order for damage to the unit – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

Issue(s) to be Decided

Was the Tenant served with the application for dispute resolution and notice of hearing in accordance with Section 89 of the Act?

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 8, 2010. Rent in the amount of \$950.00 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 \$465.00. The Tenant failed to pay rent for the month of July 2011 and on July 12, 2011 the Landlord served the Tenant with a notice to end tenancy for non-payment of rent by posting the Notice on the door.

The Landlord states that on August 25, 2011, an application was made for a monetary order for unpaid rent and an order of [possession. The Landlord states that this

application was dismissed with leave to reapply due to the Landlord's inability to provide evidence of service of the application on the Tenant.

After making this application on September 2, 2011, the Landlord attended the unit on September 3, 2011 and did not find the Tenant present. The Landlord left messages at the Tenant's phone number but did not receive any response. Furniture and junk was in the unit and the Landlord believed that the Tenant was in the process of moving so the Landlord served the Tenant with the application and notice of hearing at the unit address on September 7, 2011 by registered mail. The Tenant has not since contacted the Landlord or returned the keys to the unit. The Tenant did not attend the hearing.

The quantum of the Landlord's claim is \$2,790.00.

Analysis

Given the undisputed evidence of the Landlord that the Tenant's belongings were still in the unit on September 3, 2011, I find that the Landlord's belief that the Tenant was still in the process of moving out of the unit to be reasonable and find on a balance of probabilities that the Landlord served the Tenant with the application and notice of hearing in accordance with the Act.

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 undisputed evidence 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 filed an application to dispute the notice and has not paid the outstanding rent. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. I also find that the Landlord has established a monetary claim for

\$2,790.00 in unpaid rent. The Landlord is entitled to recovery of the \$50 filing fee, for a total entitlement of **\$2,840.00**. The **security deposit** will be off-set from the award made herein.

Calculation for Monetary Order

Unpaid rent	\$2,790.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and interest <i>to date</i>	-465.00
Total Monetary Award	\$2,375.00

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 \$465.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$2,375.00**. 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: September 30, 2011.

Residential Tenancy Branch