



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.

The landlord participated in the hearing and provided affirmed testimony. He testified that he served the Notice of a Dispute Resolution Hearing to the tenants by way of registered mail sent on August 19th, 2011, and provided a Canada Post tracking number. The tenant did not participate and the hearing proceeded in the tenant's absence.

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 an apartment in a multi-unit complex. Pursuant to a written agreement, the month to month tenancy started on May 1st, 2007. The rent was \$785.00 per month and the tenant paid a security deposit of \$362.50.

The landlord testified that the tenant acknowledged receipt of the Notice of a Dispute Resolution Hearing and stating that he bought the building. The landlord said that on September 1st, 2011, the tenant paid towards his arrears. In his documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy, which he said was served on August 8th, 2011 by posting the notice on the tenant's door.

The landlord's amended monetary claim is as follows:

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| - Unpaid rent for August 2011: | \$ 784.08 |
| - NSF charge: | \$ 28.00 |
| - Late fee: | \$ 25.00 |
| - Loss of rental income for September: | \$ 785.00 |
| - Late fee for September: | \$ 25.00 |
| - Sub-total: | \$1647.08 |
| - Less \$700.00 paid by the tenant: | \$ 947.08 |

Analysis

I accept the landlord's undisputed testimony that he served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

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. I also accept the landlord's testimony concerning the loss of rental income for September 2011 and I find that he is entitled to recover that loss; however, since he ended the tenancy by issuing a Notice to End Tenancy effective the month prior, the tenancy ended and the landlord is not entitled to recover a late fee for September.

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.

The landlord established a claim of \$922.08. I authorize the landlord to retain the tenant's \$362.50 security deposit for a balance owing of \$559.58. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$609.58. 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: September 20, 2011.

Residential Tenancy Branch