



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 unpaid rent and utilities; and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; 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 an apartment in a multi-unit complex. Pursuant to a written agreement no provided as evidence, the tenancy started May 3rd, 2011. The rent is \$1400.00 and the tenant paid a security deposit of \$1400.00, which the landlord re-defined as the last month's rent. I consider that the amount was held as security against

the tenancy and that it is in fact a security deposit, which is in excess of the allowed amount of half the rent pursuant to section 19 of the Act.

The landlord testified that the tenant gave three rent cheques returned “NSF” by the bank for the months of July, August, and September 2011. He stated that the tenant also owes unpaid utilities of \$157.49. In his monetary claim the landlord is also requesting \$350.00 for rental of the elevator upon moving out.

For his documentary evidence, the landlord provided the 10 Day Notice to End Tenancy served on the tenant August, 10th, 2011 by posting the notice on the tenant’s door.

The tenant did not argue the landlord’s testimony; he testified that he fell into hard times and that he would be moving out by the end of the week.

Analysis

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 and on that basis alone the landlord is entitled to an Order of Possession.

Based on the parties’ testimony, I also find that the tenant owes rent for three months as well as utilities. Since the tenant has not moved out yet, the claim for rental of the elevator is premature. Section 60(1) of the Act provides for a landlord to make an application for dispute resolution over matters related to the tenancy within two years after the tenancy ends. The landlord is entitled to claim further monetary compensation as required against the tenant for any damages or loss alleged, and to submit evidence at that time.

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 \$4357.49 (3 months' rent at \$1400 per month, and \$157.49 for utilities). I authorize the landlord to retain the tenant's \$1400.00 security deposit for a balance owing of \$2957.49. 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 \$3007.49.

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 21, 2011.

Residential Tenancy Branch