



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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; 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

Pursuant to a written agreement, the tenancy started on August 1st, 2010. The rent is \$1080.00 per month and the tenant paid a security deposit of \$540.00. The landlord testified that August rent was paid on September 1st, 2011, and that the tenant is now in arrears for September's rent.

The tenant corrected the landlord's testimony, in that payment was made on September 1st for September rent, and that she remains in arrears for August. She stated that she was laid off unexpectedly and fell short of being able to pay rent for that month. The tenant identified issues with the tenancy which she felt was worth a month's free rent, such as the smell of marijuana seeping into her unit.

Analysis

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. Further, Section 46(5) of the *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. On that basis I find that the landlord is entitled to an order of possession.

Based on the parties' testimony I also find that the landlord is entitled to a monetary order for unpaid rent as claimed.

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 \$540.00 security deposit for a balance owing of \$540.00. 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 \$590.00.

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: September 28, 2011.

Residential Tenancy Branch