



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPR, MNR

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on September 7, 2011 for:

1. An Order cancelling a One Month Notice to End Tenancy – Section 46.

The Landlord applied on September 8, 2011 for:

1. An Order of Possession pursuant to a 10 day Notice to End Tenancy - Section 55; and
2. An Order for unpaid rent or utilities - Section 67.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

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 March 23, 2011. Rent in the amount of \$545.00 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 \$272.50. The Tenant failed to pay rent for the month of September 2011 and on September 2, 2011 the

Landlord personally served the Tenant with a notice to end tenancy for non-payment of rent (the "Notice"). The Tenant has also not paid the rent for September 2011.

The Tenant has not filed an Application for Dispute Resolution to dispute this Notice, has not paid the rent and has not moved out of the unit. The Landlord claims \$1,090.00 for unpaid rent.

Analysis

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. Although the Tenant filed a dispute resolution application, this application was in relation to a dispute of the One Month Notice to End tenancy for Cause. The Tenant stated that she is not disputing the Notice and intends to move out of the unit.

Based on the evidence of both Parties, 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, has not paid the outstanding rent and does not dispute the Notice. 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 **\$1,090.00** in unpaid rent. The security deposit of \$272.50 is set off against the monetary entitlement of the Landlord, leaving a balance payable by the Tenant to the Landlord of **\$817.50**.

As the tenancy has ended, and accepting the Tenant's evidence that she intends to move out of the unit, I find that the Tenant's application is no longer relevant and I dismiss the Tenant's application.

Conclusion

The Tenant's application is dismissed.

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 \$272.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$817.50**. 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: October 05, 2011.

Residential Tenancy Branch