



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant stated that her surname on the application was incorrect; the name was amended to reflect the correct surname, as indicated on the tenancy agreement submitted as evidence.

During the hearing the female respondent left and the male, who was not named on the application but who is the male tenant include on the tenancy agreement, carried on participating in the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on November 1, 2009; rent is currently \$940.00 per month; an amount agreed to by the parties during the hearing. Rent is due on the first day of each month. A deposit in the sum of \$445.00 was paid on November 1, 2009.

The tenant confirmed receipt of a Ten (10) Day Notice to End Tenancy for non-payment of rent, on October 7, 21011, which had an effective date of October 17, 2011. The proof of service document submitted as evidence was signed by the tenant's spouse, an adult who resides with the tenant and who is named on the tenancy agreement.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,340.00 within five days after the tenants received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless they filed an Application for Dispute Resolution or paid the rent in full, within five days. The landlord stated the tenant owed \$400.00 from a previous month's rent due.

The tenant paid \$400.00 owed on October 13, 2011; no further rent payments have been made.

The landlord is claiming unpaid rent in the sum of \$1,880.00 for October and November, 2011.

Analysis

I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on October 17, 2011, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant did not exercise either of these rights, therefore; pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after the Order is served.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,880.00 for October and November, 2011, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Section 72(2) of the Act provides a dispute resolution officer with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant. The landlord agreed to the utilization of section 72. Therefore, I find that the landlord may retain the tenant's security deposit plus interest, in the amount of, in partial satisfaction of the monetary claim.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$1,930.00, which is comprised of unpaid October and November, 2011, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$445.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,485.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia 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: November 09, 2011.

Residential Tenancy Branch