



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 Matter

The application was amended to include a claim for unpaid November, 2011, rent.

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 for unpaid rent?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed that the tenancy commenced on May 1, 2009, rent was \$1,450.00 and increased to \$1,495.00 effective November 1, 2011. A security and pet deposit in the sum of \$725.00 each was paid on April 9, 2011.

The tenant confirmed she did not pick up the registered mail containing the 10 Day Notice Ending Tenancy for Unpaid Rent sent to her by the landlord on October 6, 2011. A copy of the registered mail receipt was submitted as evidence of service. The tenant was away. The tenant did receive a copy of the Notice when she was served with Notice of this hearing, sent by registered mail on October 21, 2011.

The Ten (10) Day Notice to End Tenancy for non-payment of rent had an effective date of October 16, 2011 and was issued on October 6, 2011.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,750.00 within five days after the tenant is assumed to have 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 the tenant filed an Application for Dispute Resolution within five days.

The tenant confirmed that she did not pay \$300.00 owed in September, 2011. The parties agreed that since October 6, 2011, the tenant has made 3 separate payments totaling \$2,000.00; receipts for use and occupancy were issued.

The tenant did not dispute that she currently owes the landlord \$1,245.00 for rent between September and November, 2011, inclusive.

Analysis

I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on October 21, 2011; 5 days after the October 6, 2011, registered mail is deemed to have been served, 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. In the circumstances before me I have no evidence that the tenant exercised either of these rights. The rent has not been paid in full, the landlord has not reinstated the tenancy and the tenant did not dispute the Notice. 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 two days after the order is served.

I find that the maximum rent increase allowed in 2011, based on \$1,450.00 rent owed in October, 2011, was 2.3%, or \$33.35. Therefore, in the absence of evidence of a rent increase given as required by the Act, I find that rent remained at \$1,450.00.

Therefore, I find that the tenant owed \$3,200.00 between September and November, 2011, inclusive; that she paid a total of \$2,000.00; resulting in a balance owed in the sum of \$1,200.00 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.

The deposits shall be disbursed as provided by the Act.

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 \$1,250.00, which is comprised of unpaid rent owed from September to November, 2011, inclusive and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,250.00. 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 15, 2011.

Residential Tenancy Branch