

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This is an application filed by the Landlord for an order of possession based upon a 10 day notice to end tenancy for unpaid rent, a monetary order request for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

No evidence has been submitted into evidence for this file. At the beginning of the hearing the Landlord states that evidence was filed with both the Residential Tenancy Branch and the Tenant. The Tenant has confirmed receiving the notice of hearing and evidence package submitted by the Landlord. The Tenant has not filed any evidence. The hearing shall proceed by direct testimony by both parties.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

Both parties agreed that the Tenant received the 10 day notice to end tenancy dated October 26, 2011 in person when the Landlord personally delivered it to her. Both parties also agree that the notice displays an effective date of November 5, 2011 and an outstanding rent due of \$1,800.00. The monthly rent is \$1,600.00 due on the first of each month. The Landlord currently holds a security deposit of \$800.00 that was paid on August 1, 2011 by the Tenant.

The Tenant states that she did pay the rent, but did not file for dispute upon receiving the notice. The Landlord disputes this stating that no rent was received. The Tenant states that the Landlord has post dated cheques. The Landlord states that when she went to the bank to attempt and deposit the funds that the bank informed her that there

were insufficient funds for the cheque. The Tenant confirmed in her direct testimony that there were no funds in her account in October.

The Landlord is seeking to claim \$3,400.00 consisting of rent arrears of \$200.00 from August 2011, \$1,600.00 in unpaid rent for September 2011 and \$1,600.00 in unpaid rent for November 2011. The Tenant confirms that no rent has been paid for October 2011 in cash, but has no evidence of paid rent. The Tenant also confirms that no rent has been paid for November 2011.

Analysis

I accept the Landlord's undisputed testimony and I find that the Tenant was served with a 10 day notice to end tenancy for unpaid rent. The Tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based upon the above facts, I find that the Landlord is entitled to an order of possession. The Tenant must be served with the 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.

As for the monetary order, I find that the Landlord has established a claim for \$3,400.00 in unpaid rent. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$800.00 security deposit in partial satisfaction and I grant the Landlord an order under section 67 for the balance due of \$2,650.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted an order of possession and a monetary order for \$2,650.00. The Landlord may retain the security deposit.

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 28, 2011.

Residential Tenancy Branch