



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF

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 November 10, 2011 for An Order cancelling a Notice to End Tenancy for unpaid rent – Section 46.

The Landlord applied on June 21, 2011 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67;
3. An Order to keep all or part of the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

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 valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The agreed facts are as follows: The tenancy began on September 14, 2011. Rent in the amount of \$750.00.00 is payable in advance on the fifteenth (15th) day of each

month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$500.00. The Landlord states that the Tenant failed to pay rent full for the month of October 2011 and on November 8, 2011 the Landlord personally served the Tenant with a notice to end tenancy for non-payment of rent. The Tenant has not filed an Application for Dispute Resolution, has not paid the remaining outstanding rent for October 2011 in the amount of \$75.00, has not paid November 2011 rent in the amount of \$750.00 and has not moved out of the unit. The Landlord claims \$825.00 for rental arrears.

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.

Based on the Landlord's evidence 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 and has not paid the outstanding rent. Given these facts, I find that the Landlord is entitled to an **Order of Possession effective 1:00 p.m. December 14, 2011**. I also find that the Landlord has established a monetary claim for **\$825.00** in unpaid rent. The Landlord is also entitled to recovery of the \$50.00 filing fee for a total monetary amount of **\$875.00**. Setting the security deposit plus interest in the amount of \$500.00 off the entitlement leaves the amount of **\$375.00** payable by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession with an effective date of December 14, 2011 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 \$500.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$375.00**. 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: November 30, 2011.

Residential Tenancy Branch