



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

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

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing.

The Landlord was 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 October 20, 2010. Rent in the amount of \$800.00 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 \$400.00. The Tenant failed to pay rent for the month of October 2011 and on October 2, 2011 the Landlord

served the Tenant with a notice to end tenancy for non-payment of rent by posting the notice on the door. The Tenant moved out of the unit on November 10, 2011 but left items in the unit. The Tenant did not file an Application for Dispute Resolution. The Landlord claims \$800.00 for unpaid rent for October 2011. The Landlord also requested at the Hearing a monetary order to include unpaid rent for November 2011 plus \$50.00 for two late fees. The tenancy agreement does not provide for late fees.

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.

Although the Tenant has moved out of the unit, some items are remaining. Given these facts, I find that the Landlord is entitled to an **Order of Possession**.

Section 44 of the Act sets out when a tenancy will end. Where a Landlord has elected to end a tenancy because of non-payment of rent, a tenant is not liable to pay rent after the tenancy agreement has ended pursuant to this section. If however, the tenant remains in possession of the premises, the tenant will be liable to pay occupation rent until the landlord recovers possession of the premises. The Landlord in this case has elected to end the tenancy agreement for non-payment of rent by serving a 10 day notice to end tenancy with a move-out date of October 12, 2011. The Tenant moved out of the unit on November 10, 2011 but left items behind. As such, the Tenant is liable for rent to that date. Although the application does not include a claim for any rent in November 2011, I accept the Landlord's request as it is reasonable to expect that the Tenant should have known that rent would be payable for as long as the Tenant

occupies the unit. I therefore amend the application to include a claim for lost rental income arising from the Tenant's over holding of the unit and find that the Landlord is entitled to unpaid rent for the month of October 2011 in the amount of \$800.00 and for the period November 1 – 15, 2011 in the amount of \$400.00. As the tenancy agreement does not contain any reference to late fees, I dismiss this part of the Landlord's claim. The Landlord is entitled to recovery of the \$50.00 filing fee for a total entitlement of \$1,250.00. Setting the security deposit plus interest in the amount of \$400.00 off this entitlement leaves a balance owing by the Tenant to the Landlord of \$850.00.

Conclusion

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 \$400.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$850.00**. 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 16, 2011.

Residential Tenancy Branch