



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord on October 5, 2011 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served by registered mail sent on September 10, 2011. The landlord also sought a Monetary Order for the unpaid rent, unpaid utilities, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent and utilities, recovery of the filing fee and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on July 1, 2011. Rent is \$2,000 per month and the landlord holds a security deposit of \$1,000 paid in June 2011.

During the hearing, the landlord gave uncontested evidence that the Notice to End Tenancy of September 10, 2011 had been served the tenant had a rent shortfall of \$1,800 for the rent due on September 1, 2011.

In the interim, the tenant did not pay the rent due on October 1, 2011 but subsequently made a payment of \$2,000 on October 27, 2011.

At the time of the hearing, the tenant had paid no rent for November 2011 and, as authorized under section 64(3)(c) of the Act, I have permitted the landlord to amend the application to include a claim for rent/loss of rent for November 2011.

The tenant did not contest the amount of unpaid rent claimed by the landlord but noted that she had grievances over running toilets in the rental unit which she stated had elevated the water bill. The landlord stated that he had sent a service person to make the repairs and he thought they had been done.

The landlord also submitted claims for utilities but the tenant contested those claims on the grounds that the cost sharing between suites was disproportionate, some bills had not been received and one was in the tenant's name.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due irrespective of any grievances the tenants may have for which other remedies are available.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenants may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was September 25, 2011, taking into account the five days for deemed service of documents served by registered mail.

Accordingly, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenant.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent, filing fee and authorization to retain the security deposit in set off against the balance owed.

However, in the absence of a copy of the rental agreement or invoices pertaining to the contested utilities, and as it is premature to do a final accounting of utilities use, I dismiss this portion of the landlord's application with leave to reapply.

Thus, I find that the tenant owes the landlord an amount calculated as follows:

Rent shortfall for September 2011	\$1,800.00
-----------------------------------	------------

Rent/loss of rent for November 2011	2,000.00
Filing fee	<u>50.00</u>
Sub total	\$5,850.00
Less payment made on October 27, 2011	- 2000.00
Less retained security deposit (No interest due)	<u>- 1,000.00</u>
TOTAL	\$2,850.00

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary Order for **\$2,850.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord is at liberty to make application for any further losses or damage as may be ascertain at the conclusion of the tenancy, including any outstanding utility bills.

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 01, 2011.

Residential Tenancy Branch