



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 utilities and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on December 9, 2011, copies of the Application for Dispute Resolution and Notice of Hearing were given to the male respondent, at the door of the rental unit, with a neighbour present as witness; at approximately 11 a.m.

These documents are deemed to have been served in accordance with section 89 of the Act; however the male tenant did not appear at the hearing.

Preliminary Matters

The female respondent has not entered into a tenancy agreement with the landlord; she moved into the unit and has not paid rent or signed an application to rent or a tenancy agreement. Therefore, I determined that the female respondent is an occupant and have amended the application to remove her name.

As the landlord has not yet received a copy of the utility bill, the portion of the application claiming utility costs was dismissed with leave to reapply.

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 landlord rented the unit to 2 males; the tenancy commenced on November 1, 2011, rent is \$900.00 per month, due on the first day of the month. A deposit in the sum of \$450.00 was paid.

The tenants paid November rent and have failed to pay December, 2011, rent.

The landlord stated that on December 2, 2011, at approximately 11 a.m. with her friend present as a witness a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 31, 2011, was personally served to the male tenant, at the rental unit.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$900.00 within five days after the tenant received the Notice. The Notice also indicated that the tenant is presumed to have accepted that the tenancy is 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.

During the hearing the landlord stated she wished to retain the deposit.

Analysis

The Notice issued was on a form that was in use in 2003; however, the Notice reflects the accurate sections of the Act and provided the tenant will all information as required by the Act.

The landlord issued the Notice on the date rent was due and then served the tenant a copy of the Notice on December 2, 2011. I have amended the issue date, as provided by section 68 of the Act, as I find it is reasonable for the tenant to have understood rent was due on the first day of the month and that he had not paid the rent owed by the 2nd day of the month; the date he was given the Notice.

Director's orders: notice to end tenancy

- 68** (1) *If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that*
- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and*
 - (b) in the circumstances, it is reasonable to amend the notice.*
- (2) *Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,*
- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or*

(b) set aside or amend a notice given under this Act that does not comply with the Act.

Therefore, I have amended the Notice issue date to December 2, 2011.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that requires the tenant to vacate the rental unit on December 31, 2011, 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; 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 at 1 p.m. on December 31, 2011.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$900.00 for December, 2011, 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.

Section 72(2) of the Act provides a dispute resolution officer with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant. The landlord requested retention of the deposit. Therefore, I find that the landlord may retain the tenant's security deposit in the amount of \$450.00, in partial satisfaction of the monetary claim.

A copy of a *Guide for Landlords and Tenants in British Columbia* has been enclosed for the landlord's reference.

Conclusion

The landlord has been granted an Order of Possession that is effective at 1 p.m. on December 31, 2011. 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 \$950.00, which is comprised of \$900.00 in unpaid December, 2011, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$450.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$500.00. 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: December 22, 2011.

Residential Tenancy Branch