

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

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

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

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 all or part of the security deposit?

Background and Evidence

This Tenancy began on December 6, 2006 on a month to month basis as shown in the submitted copy of the signed tenancy agreement. A security deposit of \$490.00 was paid at the beginning of the tenancy and the monthly rent of \$590.00 is due on the 1st of each month.

The Landlord states that the Tenant was served by personal service on November 3, 2011 to the Tenant's daughter. The Tenant has confirmed receipt of the Landlord's notice of hearing and evidence package, but states that she was away until a few days before the hearing date.

The Landlord states that the Tenant's rent payment for October 2011 was returned as Not Sufficient Funds. The Landlord received rent at the beginning of November 2011 and applied this amount to the October rent arrears. The Landlord served the Tenant with the 10 day notice to end tenancy. The Tenant states that as she was out of town that no rent was paid or an application filed within the allowed 5 days time period. The Landlord seeks an order of possession and a monetary order for the unpaid rent of November 2011. The Tenant has confirmed that no rent payment for November 2011 has been made.

Analysis

I accept the Landlord's undisputed testimony and I find that the Tenant was served with the 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 based upon the Tenant's own direct testimony that no rent was paid and that the Landlord has established a claim for \$615.00, consisting of \$590.00 in unpaid November 2011 rent and a \$25.00 NSF charge for October 2011 rent. The Landlord is entitled to recovery of the \$50.00 filing fee. I order that the Landlord may retain the \$505.03 security deposit, consisting of the original \$490.00 and \$15.03 in accrued interest and I grant the Landlord a monetary order under section 67 for the balance due of \$159.97. 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 \$159.97. 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: December 01, 2011.

Residential Tenancy Branch