



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 April 1, 2011. Rent in the amount of \$625.00 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 \$312.50. The Tenant failed to pay rent for November 2011 and on November 7, 2011 the Landlord served the

Tenant with a notice to end tenancy for non-payment of rent (the "Notice") by posting the Notice on the door. The Tenant paid the amount of \$420.00 before the end of November and the Landlord accepted the rent for "use and occupancy only". The Tenant failed to pay the remainder of rent owing, failed to pay December 2011 rent, has not filed an application for dispute resolution to dispute the Notice and has not moved out of the unit. The Landlord claims \$205.00 for November outstanding rent, a \$25.00 late fee for November rent and \$625.00 for unpaid December 2011 rent for a total claim of **\$855.00**. It is noted that the tenancy agreement provides for the payment of a \$25.00 late fee upon late payment of rent.

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 the Notice 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**. I also find that the Landlord has established a monetary claim for **\$855.00** in unpaid rent and a late fee charge. The Landlord is also entitled to recovery of the \$50.00 filing fee for a total monetary amount of **\$905.00**. Setting the security deposit plus interest in the amount of \$312.50 off the entitlement leaves the amount of **\$592.50** payable by the Tenant to the Landlord.

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 \$312.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$592.50**. 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: December 07, 2011.

Residential Tenancy Branch