



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, loss of rent, and late fees. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing the landlord reduced the monetary claim to exclude the anticipated loss of rent and late fees for January 2011. Accordingly, I have not considered those requests with this application and the landlord is granted leave to reapply for loss of rent for months after December 2011 as applicable.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to compensation for unpaid rent and late fees for November 2011?
3. Is the landlord entitled to compensation for loss of rent for December 2011?

Background and Evidence

The tenancy commenced April 2, 2011 and the tenant is required to pay rent of \$1,525.00 on the 1st day of every month for a fixed term of one year. The tenant paid a \$762.50 security deposit, \$200.00 pet deposit, and a \$40.00 fob deposit. On November 2, 2011 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door. The Notice states that rent of \$1,525.00 was outstanding as of November 1, 2011 and has a stated effective vacancy date of November 12, 2011. The tenant paid \$520.00 towards the outstanding rent on November 15, 2011. The tenant did not dispute the Notice.

The landlord requested recovery of the following amounts:

November rent and late fee – per ledger	\$ 1,020.00
December late fee	20.00
December loss of rent	1,525.00
Filing fee	<u>50.00</u>
Total amended claim	\$ 2,615.00

The landlord provided copies of the following documentary evidence in support of this application: the tenancy agreement and addendum; the 10 Day Notice; Proof of Service of the 10 Day Notice; and, the tenant's ledger.

The tenant acknowledged that she did not pay rent when due and receipt of the 10 Day Notice. The tenant explained that she is suffering severe financial difficulties and is currently in the process of getting approval for government assisted housing. The tenant explained she is in the process of packing and is preparing to move out of the rental unit.

Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I note the 10 Day Notice does not include the date it was issued; however, based upon the evidence before me I accept that it was posted on the tenant's door November 2, 2011 and I deem the tenant to have received it three days later on November 5, 2011. Accordingly, the effective date of the Notice is automatically changed to read November 15, 2011.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on November 15, 2011 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant. If the tenant does not comply with the Order of Possession the landlord may enforce it in The Supreme Court of British Columbia as an Order of that court.

Upon review of the evidence before me, I find the landlord entitled to recover the balance of unpaid rent and a late fee for the month of November 2011. I also award the

landlord loss of rent for the month of December 2011 and the filing fee paid for this application. I do not award a late fee for December 2011 as the tenancy came to an end in November 2011.

In light of the above findings the landlord is provided Monetary Order in the amount claimed of \$2,595.00 to serve upon the tenant and enforce in Provincial Court (Small Claims) as necessary.

The security deposit, pet deposit and fob deposit remain in trust for the tenant, to be administered in accordance with the Act.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been provided a Monetary Order in the amount of \$2,595.00 to serve upon the tenant.

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 06, 2011.

Residential Tenancy Branch