



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR; MNR; MNDC, MNSD

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; and to retain the security deposit in partial satisfaction of her monetary claim.

The parties gave affirmed testimony at the Hearing.

It was established that the Tenant received the Notice of Hearing documents on November 30, 2011.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent for the month of November and loss of revenue for the month of December, 2011?

Background and Evidence

This tenancy began on October 1, 2011. Monthly rent is \$950.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$475.00 on October 1, 2011.

The Tenant did not pay rent when it was due on November 1, 2011. On November 25, 2011, the Landlord served the Tenant with a 10 day Notice to End Tenancy (the Notice).

The Tenant did not pay the outstanding rent, or file an application to cancel the Notice within 5 days of receipt of the Notice.

The Tenant testified that she paid \$400.00 of the November rent on December 8, 2011, and that she has not paid rent for December, 2011. The Landlord testified that the Tenant paid \$450.00 on December 8, 2011, not \$400.00.

Analysis

Based on the testimony of both parties, I accept that the Landlord served the Tenant with the Notice to End Tenancy on November 25, 2011. The Tenant did not pay the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on December 5, 2011. The Tenant is overholding and I find that the Landlord is entitled to an Order of Possession **effective 2 days after service of the Order upon the Tenant.**

The Tenant made a partial payment towards November's rent on December 8, 2011, but I find that there was no agreement between the parties that the tenancy would continue. The parties disagreed with respect to the amount the Tenant paid on December 8, 2011. There was no documentary evidence (for example a receipt for the rent paid) and therefore I find to the Tenant's benefit that the Tenant paid \$450.00 on December 8, 2011. Therefore, I find that unpaid rent for the month of November is **\$500.00** (\$950.00 - \$450.00).

The Tenant remains in the rental unit and I find that the Landlord is entitled to loss of revenue for December in the amount of **\$950.00**.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary award. No interest has accrued on the security deposit.

The Landlord has established a monetary claim as follows:

Unpaid rent for November, 2011	\$500.00
Less set-off of security deposit	<u>- \$475.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$975.00

Conclusion

I hereby provide the Landlord an Order of Possession effective **2 days after service of the Order upon the Tenant.** This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$975.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 15, 2011.

Residential Tenancy Branch