



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application: CNR

Landlord's application: OPR; MNR; FF

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks to cancel a Notice to End Tenancy for Unpaid Rent.

The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenant.

The Landlord's agent and the Tenant gave affirmed testimony at the Hearing.

Issues to be Decided

- Should the Notice to End Tenancy for Unpaid Rent issued December 2, 2011 (the "Notice") be cancelled or upheld?
- If the Notice is upheld, is the Landlord entitled to an Order of Possession and Monetary Order for unpaid rent?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in evidence. The rental unit is the basement suite of a house. The Landlord resides on the main floor of the house. Monthly rent is \$850.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$850.00 at the beginning of the tenancy.

The Landlord's agent testified that the Tenant has not paid rent for the months of October, November and December, 2011. The Tenant testified that there was another occupant who was supposed to pay ½ of the rent, but had not paid her share. She stated that she owed ½ of the rent for September and ½ of the rent for October and had not paid any rent for the months of November or December, 2011.

The Landlord's agent testified that the Landlord served the Tenant with the Notice on December 2, 2011, by handing the Notice to the Tenant at the rental unit. The Tenant agreed that she had received the Notice on that day.

Analysis

The tenancy agreement provided in evidence is between the Tenant and the Landlord only. The Tenant agreed that there was no separate tenancy agreement between the other occupant and the Landlord and that the other occupant was not the Landlord's tenant. Based on the testimony and documentary evidence provided, I find that the Tenant is in arrears of rent in the amount of \$2,550.00. Section 46 (1) of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due. There was no evidence that the Tenant was permitted by the Act to deduct any rent, pursuant to the provisions of Section 46(3) of the Act. Therefore, I find that the Tenant is in arrears in the amount of \$2,550.00 for unpaid rent and dismiss the Tenant's application to cancel the Notice.

I accept that the Notice was served on December 2, 2011. Therefore, I find that the tenancy ended 10 days afterwards, on December 12, 2011. I find that the Tenant is overholding and that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant.

The Landlord has been successful in his application and is entitled to recover the cost of the filing fee from the Tenant.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit in partial satisfaction of his monetary award for unpaid rent.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Unpaid rent	\$2,550.00
Recovery of filing fee	\$50.00
Less security deposit held by Landlord	<u>-\$850.00</u>
Total	\$1,750.00

Conclusion

The Tenant's application to cancel the Notice to End Tenancy issued December 2, 2011 is dismissed.

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 **\$1,750.00** 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 21, 2011.

Residential Tenancy Branch