



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent and for damage to the rental unit; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. He testified that he served the Notice of a Dispute Resolution Hearing to the tenant in person and with a witness on December 17th, 2011, and that the tenant replied that he would be in attendance. The tenant did not participate and the hearing proceeded in the tenant's absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a basement suite. Pursuant to a written agreement, the month to month tenancy started on December 1st, 2011. The rent is \$600.00 payable on the first of each month. The tenant paid a security deposit of \$300.00.

The landlord testified that the tenant continues to live in the suite and that since the filing of this dispute he has not paid rent for January. He stated that the tenant has made promises to pay but that date he has received no money.

The landlord submitted a monetary claim as follows:

- Unpaid rent for December 2011:	\$ 600.00
- Unpaid rent for January 2012:	\$ 600.00
- Broken stair:	\$ 100.00
- Total:	\$1300.00

Analysis

I accept the landlord's undisputed testimony that he served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the landlord to prove his claim

against the tenant. The landlord provided no material evidence to support his claim for the broken stair, such as photographs, condition inspection reports, or receipts. Therefore I dismiss this aspect of the landlord's claim.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution. The landlord's Notice to End Tenancy is valid and on that basis the landlord is entitled to an order of possession.

I also accept the landlord's undisputed testimony concerning the unpaid rent and find that the landlord is entitled to recover rental income for December 2011 and January 2012.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord established a claim of \$1200.00. I authorize the landlord to retain the tenant's \$300.00 security deposit for a balance owing of \$900.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$950.00.

This Order may be registered 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: January 05, 2012.

Residential Tenancy Branch