



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 conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent or utilities; a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and for unpaid rent or utilities; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

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 ground level suite in a four-plex building. Neither party could locate a copy of the tenancy agreement. The landlord testified that he took over the management of the complex in October 2011; he stated that he had a falling out with the previous landlord and that for this reason he has received no documents

concerning this tenancy. He stated that the rent is \$1050.00 per month and has no knowledge of a security deposit being paid.

The landlord stated that the tenant did not pay rent or her portion of utilities for December 2011 and January 2012, with the exception of \$200.00 and submitted an updated monetary claim as follows:

- Unpaid rent for December 2011:	\$1050.00
- Unpaid utilities for December 2011:	\$ 98.00
- Unpaid rent for January 2012:	\$1050.00
- Unpaid utilities for January 2012:	\$ 98.00
- Sub-total:	\$2296.00
- Less \$200.00 from the tenant:	\$ 200.00
- Balance owing:	\$2096.00

The tenant did not dispute the landlord's monetary claim. She testified that she paid rent of \$1200.00 per month until she discovered that it was in fact \$1050.00, and that she paid a security deposit of \$600.00. She stated that there were several problems with the rental unit; she said that her suite has been broken into and that her rent money was stolen, which explains her inability to pay rent. She stated that she addressed problems with mould, fighting, and lack of heat among other problems with the landlord.

Analysis

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.

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. If the tenant has problems concerning the rental unit or her security deposit, a remedy would be to seek assistance through dispute resolution to resolve the issue if the landlord fails to attend to the issue.

Based on the parties' testimony I accept that the tenant owes rent and utilities for the two months in question, and that the landlord is entitled to a monetary order.

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 \$2096.00. 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 \$2146.00. 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 09, 2012.

Residential Tenancy Branch