



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

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 money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for unpaid rent; to keep the security deposit; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. He testified that she served the Notice of a Dispute Resolution Hearing to the tenants by way of registered mail sent on January 4th, 2012, and provided a Canada Post tracking number. The tenants did not participate and the hearing proceeded in the tenants' 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 single detached home. Pursuant to a written agreement, the fixed term tenancy started on May 2nd, 2011 and was to end on April 30th, 2012. The rent is \$800.00 per month and the tenant paid a security deposit of \$400.00, and a pet damage deposit of \$300.00, although the agreement states \$400.00.

The landlord testified that the tenants continue to occupy the rental unit without paying rent. She stated that at the tenants' request, she had a handicap railing especially built for the female tenant, and a gate for the tenants' pets.

In her documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy that she said was served on the tenants in person, and that the tenants acknowledged receipt of the notice; a copy of a handwritten promissory note from the male tenant dated November 2nd, 2011, stating that he would pay his arrears; and an electronic correspondence from the landlord notifying the tenants by way of invoice that they owe the following:

- September 2011 rent:	\$ 350.00
- October 2011 rent:	\$ 800.00
- November 2011 rent:	\$ 800.00
- December 2011 rent:	\$ 800.00
- Sub-total:	\$2750.00
- Less security deposit:	\$ 400.00
- Less pet damage deposit:	\$ 300.00
- Balance owing:	\$2050.00
- Gate and railing expenses:	\$ 378.62
- Total:	\$2428.62

At the hearing, the landlord submitted an updated claim to include unpaid rent for January 2012, and the loss of rental income for February 2012 totalling \$1600.00 and a claim of \$4028.62

Analysis

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

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.

Concerning the monetary claim I accept the landlord's undisputed testimony regarding unpaid rent and the gate and railing expenses. I find that the landlord is entitled to recover the loss of rental income and the expenses as claimed.

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 \$4028.62, which already includes the deductions for the security deposit and the pet damage deposit. 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 \$4078.62.

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 17, 2012.

Residential Tenancy Branch