



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.

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 single detached home. Through the interpreter, the landlord testified that the tenancy started on March 8th, 2011; that the rent is \$1200.00 per month and the tenant did not pay the required security deposit of \$600.00.

The landlord stated that the tenant owes the following rental arrears:

- November 2011: \$1000.00
- December 2011: \$1200.00
- January 2012: \$ 500.00
- Security deposit: \$ 600.00
- Total: \$3300.00

The tenant argued that he gave the tenant \$500.00 for November rent, and \$700.00 on January 2nd, 2012 towards the balance owing for November. He said that he owes rent for December 2011 and January 2012. Concerning the security deposit, the tenant testified that he painted the rental unit in lieu of paying the deposit. The landlord disputes that the painting was never approved to replace the security deposit; she said that the rental unit was freshly painted and that the tenant's painting was done at his own choosing.

In her documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy that she served the tenant on December 8th, 2011 by posting the notice on the tenant's door. The tenant does not dispute the tenant's evidence concerning unpaid rent but only the amount owed.

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.

Concerning the landlord's monetary claim; the landlord bears the burden to prove her claim against the tenant. The landlord provided no documentary evidence to support the actual amount of rent owed. I find this uncharacteristic of a landlord whose primary role is to collect rent; she did not provide any records that a businesslike landlord would be expected to maintain; she did not produce a ledger or an accounting book or any entries concerning this tenancy. I find that the landlord has not proven on a balance of probabilities how much is actually owed. The tenant however stated that he did owe \$2400.00 for unpaid rent and therefore I award the landlord that amount. Since the landlord is granted an Order of Possession it is not necessary that I award the landlord any claim for the security deposit.

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 \$2400.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee and pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$2450.00.

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