



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on December 22, the tenant did not participate in the conference call hearing.

At the hearing the landlord asked to amend her claim to include a claim for loss of income for January. I find that the tenant should reasonably have known that the landlord could not re-rent the unit while he was still living therein and I allow the amendment.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Background and Evidence

The landlord's undisputed testimony is as follows. The tenancy began on or about September 1, 2009 at which time the tenant paid a \$382.50 security deposit. The tenant's current rent is \$800.00 and is payable in advance on the first day of each month. The tenant has been repeatedly late and sporadic with rent payments. As of December 1, the tenant was \$1,085.00 in arrears and on December 4, 2011 the landlord served on the tenant a 10 day notice to end tenancy by posting the notice to the door of the rental unit. The tenant made partial payments after having received the notice to end tenancy, which were accepted for use and occupancy only. As of the date of the hearing, the tenant owed a total of \$1,310.00 which includes rental arrears and late payment fees subject to the terms of the tenancy agreement.

Analysis

I accept the landlord's undisputed testimony and I find that the tenant did not pay the rent and arrears owing in the month of December and that on December 4 the landlord posted a notice on the door. I find that the tenant received the notice three days later on December 7. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary order, I find that the landlord is entitled to recover the rental arrears, late payment fees and loss of income as claimed as well as the \$50.00 filing fee paid to bring this application for a total entitlement of \$1,360.00. Although the landlord had been awarded the security deposit in a prior application, she advised that they did not retain the deposit at that time. I order that the landlord retain the \$382.50 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$977.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$977.50. The landlord may retain the security deposit.

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