

DECISION

Dispute Codes:

OPR; MNR; MNSD

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; and to retain the security deposit in partial satisfaction of his monetary award.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that he provided copies of his documentary evidence, including a copy of the Notice to End Tenancy for Unpaid Rent, to the Tenant and to the Residential Tenancy Branch on December 28, 2011. The Tenant agreed that she had received copies of his documentary evidence, however it was not on the Residential Tenancy Branch file or in the electronic filing system.

It is not possible to confirm the validity of a Notice to End Tenancy without examining the document. The Landlord stated that he had confirmation that the documents were received by the government agent on December 28, 2011. Therefore, I asked the Landlord to re-fax the documents and advised him that I would hear the parties' submissions with respect to his application and provide him with my Decision once I had received the documentary evidence.

The Landlord's Application for Dispute Resolution seeks a monetary order for unpaid rent for the months of November and December in the total amount of \$1,066.00. The Landlord asked to amend his application to include loss of revenue for the month of January, 2012, in the amount of \$1,033.00, for a total of \$2,099.00.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Landlord gave the following testimony:

Monthly rent is \$1,700.00 per month, due the first day of each month. The Tenant paid a security deposit in the amount of \$850.00 on July 1, 2011. The rental unit is ½ of a duplex, with two separate suites. The Tenant rented both suites.

The Tenant owes \$33.00 rent for November, 2011, and only paid \$667.00 for December, 2011 and \$667.00 for January, 2012. The Tenant's rent is paid by the Ministry directly to the Landlord.

The Landlord issued a Notice to End Tenancy for Unpaid Rent on December 9, 2011, and served the Tenant with the Notice on December 9, 2011.

The Tenant gave the following testimony:

The Tenant concurred with the Landlord testimony. She testified that the other suite in the rental unit is occupied by people who have not paid their share of the rent. She stated that the other occupants were waiting for assistance from the Ministry, which they expect to receive by January 16, 2012.

The Landlord gave the following reply:

The Landlord has no Landlord/Tenant relationship with the other occupants. The Landlord asked for an Order of Possession to be effective January 16, 2012.

Analysis

The Notice to End Tenancy was re-faxed by the government agent at 2:35 p.m. on January 6, 2011. I find that the Notice conforms to the provisions of Section 52 of the Act (form and content).

Based on the testimony of both parties, I accept that the Landlord served the Tenant with the Notice to End Tenancy on December 9, 2011. This is an undisputed Notice to End Tenancy. The Tenant did not pay the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on December 19, 2011. The Landlord is entitled to an Order of Possession and I make that Order **effective 1:00 p.m., January 16, 2012.**

I accept the Landlord's undisputed testimony that no tenancy agreement exists between the other occupants and the Landlord.

The Landlord's agent asked to amend his application to include a monetary claim for loss of revenue for the month of January, 2012. The Tenant remains in the rental unit and I find that the Landlord has suffered a loss of income in the amount of \$1,033.00 for January, 2012. Therefore, I amended the Landlord's application to include the Landlord's loss of revenue.

Based on the testimony of both parties, the Landlord has established a monetary award for unpaid rent and loss of revenue for the months of November and December, 2011, and January, 2012, in the total amount of \$2,099.00.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary claim. No interest has accrued on the security deposit.

The Landlord has been successful in his application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

The Landlord has established a monetary award, calculated as follows:

Un paid rent and loss of revenue	\$2,099.00
Subtotal	\$2,149.00
Less security deposit	- \$850.00
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,299.00

Conclusion

I hereby grant the Landlord an Order of Possession effective **1:00 p.m., January 16, 2012**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby grant the Landlord a Monetary Order in the amount of **\$1,299.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

Dated: January 06, 2012.

Residential Tenancy Branch