



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR; MNR; MNSD; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

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

Monthly rent is \$1,200.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$600.00 on September 23, 2011.

The Landlord's agent testified that the Tenant did not pay all of his rent in November, 2011, so he issued a Notice to End Tenancy for Unpaid Rent on November 18, 2011 (the "Notice"), and handed the Notice to the Tenant on November 18, 2011. The Tenant acknowledged receiving the Notice on November 18, 2011.

The Tenant testified that he attempted to pay the Landlord the unpaid rent within 5 days of receipt of the Notice, but the Landlord's agent was away. He stated that he phoned the Landlord's agent and got no answer. The Tenant provided the phone number that he used to call the Landlord's agent.

The Landlord's agent denied that he was away from November 18 to 23, 2011. He stated that the number the Tenant provided was not the phone number listed on the Tenancy Agreement as a contact number for the Tenant to use.

The Landlord seeks a monetary award for unpaid rent for the month of November in the amount of \$531.66, and loss of revenue for the months of December, 2011, and January, 2012, in the amount of \$2,400.00.

Analysis

Based on the testimony of both parties, I accept that the Landlord's agent served the Tenant with the Notice to End Tenancy on November 18, 2011. Section 46(4) of the Act provides that the Tenant may pay the overdue rent or file an Application for Dispute Resolution to cancel the Notice within 5 days of being served with the Notice.

Section 46(5) of the Act provides that if a tenant does not pay the rent or file an Application to cancel the notice within 5 days of receipt of the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

I find that the Tenant did not provide sufficient evidence that he paid, or attempted to pay, the overdue rent within 5 days of receipt of the Notice. The Tenant did not file an Application to cancel the Notice. Therefore, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on November 28, 2011. The Landlord is entitled to an Order of Possession and I make that Order effective 2 days after service of the Order upon the Tenant.

The Tenant is overholding. Based on the testimony of both parties, I find that the Landlord's agent has established a monetary claim for unpaid rent and loss of revenue for the months of November and December, 2011, and January, 2012.

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 its application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

The Landlord has established a monetary claim as follows:

Unpaid rent for November, 2011	\$531.66
Loss of revenue for December, 2011	\$1,200.00
Loss of revenue for January, 2012	\$1,200.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,981.66
Less security deposit	<u>- \$600.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$2,381.66

Conclusion

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$2,381.66** for service upon the Tenant. This Order and may be filed in the Provincial Court of British Columbia (Small Claims) 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 12, 2012.

Residential Tenancy Branch