



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 hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by personal service on December 20, 2011 in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing.

The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on January 1, 2011. Rent in the amount of \$695.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$347.50. The Tenant

failed to pay rent for December 2011 and on December 2, 2011 the Landlord personally served the Tenant with a notice to end tenancy for non-payment of rent. On December 24, 2011 the Tenant paid the December rent owing. The Landlord provided the Tenant with a receipt for this rent noting this to be paid “for use and occupancy only.” The Tenant further failed to pay rent on January 1, 2011 and on January 7, 2011 the Tenant paid the amount of \$347.50 towards the January rent. The Landlord claims \$347.50 for rental arrears.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord’s evidence I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has not filed an application to dispute the notice. Although the Tenant paid the full rental arrears for December, I find that as the Landlord issued a receipt “for use and occupancy only” for this payment and as only partial rent was paid for January 2012, the tenancy has not been reinstated. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. I also find that the Landlord has established a monetary claim for **\$347.50** in unpaid rent. The Landlord is also entitled to recovery of the \$50.00 filing fee for a total monetary amount of **\$397.50**. Setting the security deposit plus interest in the amount of **\$347.50** off the entitlement leaves the amount of **\$50.00** payable by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **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.

I order that the Landlord retain the **deposit** and interest of \$347.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$50.00**. If necessary, this order may be filed 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 09, 2012.

Residential Tenancy Branch