



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 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 registered mail 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

A first tenancy with the Tenant began on August 1, 2110 at one address and a second tenancy commenced at a second address on June 1, 2011. A tenancy agreement was signed for the first tenancy but not the second tenancy. Rent for the current tenancy is \$1,300.00 payable in advance on the first day of each month. At the outset of the first tenancy, the Landlord collected a security deposit from the Tenant in the amount of

\$650.00. Upon entering into the second tenancy, the Landlord returned the amount of \$100.00 from the security deposit to the Tenant. The Landlord holds the amount of \$550.00 for a security deposit on the current tenancy. It is noted that the first tenancy agreement includes the amount of \$750.00 as the amount paid for the security deposit. The Tenant failed to pay rent for the months of September, October, November and December 2011. In September 2011, the Tenant informed the Landlord that because of an accident in which a member of the Tenant's family was involved, the Tenant was unable to pay September 2011 rent. The Landlord agreed to give the Tenant some time to pay the rent however since September 2011 no rental amount has been paid despite repeated promises by the Tenant to pay. On December 9, the Landlord served the Tenant with a notice to end tenancy for non-payment of rent by posting the notice on the door. The Tenant has not filed an Application for Dispute Resolution, has not paid rent for January 2012 and has not moved out of the unit. The quantum of the Landlord's claim is \$6,500.00.

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 and has not paid the outstanding rent. 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 **\$6,500.00** in unpaid rent. The Landlord is also entitled to recovery of the \$50.00 filing fee for a total monetary amount of **\$6,550.00**.

As the tenancy agreement sets out a different security deposit amount than the amount stated by the Landlord, I accept the documentary evidence of the original security deposit amount and accept that \$100.00 was returned from the \$750.00 taken for the first tenancy agreement and that the Landlord currently holds a remaining security deposit in the amount of \$650.00. Setting the security deposit plus interest in the amount of **\$650.00** off the entitlement of **\$6,550.00** leaves the amount of **\$5,900.00** 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 \$650.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$5,900.00**. 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 17, 2012.

Residential Tenancy Branch