



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for unpaid rent;; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the month to month tenancy started on March 1st, 2001. The tenant is responsible to pay the subsidized portion of rent set at \$521.00. Based on the rental market value in 2002, the tenant paid a security deposit of \$372.50.

The landlord provided evidence that the tenant paid the rental arrears for January 2012 by submitting a copy of a receipt for \$521.00 dated January 31st, 2012. At the hearing

the landlord amended her monetary claim to recover the bank fee of \$25.00 for a “NSF” cheque, and the filing fee. The landlord testified that the tenant left for the Philippines that month and that it would have been impossible for her to pay the rent on time. The landlord made a request for an Order of Possession. In her documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy dated January 9, 2012, which required the tenant to pay the rent by January 14th, 2012.

The tenant testified that she had a friend pay the rent, and that the bank held the cheque back, which caused the delay in paying rent on time. She stated that it this the only time that it happened.

Analysis

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution, and rent was not paid within the time frame required under the 10 Day Notice to End Tenancy. The landlord’s Notice to End Tenancy is valid and on that basis the landlord is entitled to an order of possession.

I also find that the landlord is entitled to recover the NSF bank fee and the filing fee, for a monetary claim totalling \$75.00.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I authorize the landlord to keep \$75.00 from the security deposit. Therefore the security deposit is now set at \$297.50.

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: February 07, 2012.

Residential Tenancy Branch