



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MT, CNR, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the landlord: as an application for an Order of Possession for unpaid rent, and a Monetary Order for unpaid rent.

By the tenant: as an application requesting more time to make an application to cancel a Notice to End Tenancy, for cancellation of a 10 Day Notice to End Tenancy for unpaid rent; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. She testified that she served the Notice of a Dispute Resolution Hearing to the tenant by way of registered mail sent on January 20th, 2012, and provided a Canada Post tracking number. The tenant did not participate; accordingly the tenant's application is dismissed without leave to reapply and the hearing proceeded in the tenant's absence.

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?

Background and Evidence

The rental unit consists of a basement suite in a single detached home. Pursuant to a written agreement, the month to month tenancy started on October 1st, 2011. The rent is \$950.00 per month and the tenant paid a security deposit of \$450.00.

The landlord testified that the tenant stated that welfare would pay the rent and that she was in the process of making the necessary arrangements. The landlord said that she never heard from the Ministry of Social Development, that the tenant continues to reside in the unit, and that February rent is not paid either.

In her documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy served on the tenant on January 8th, 2012, with signed Proof of Service that the notice was posted on the tenant's door. The landlord amended her application to also reflect unpaid rent for February 2012.

Analysis

I accept the landlord's undisputed testimony that she served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. The fact that the tenant filed an application after the landlord filed hers' is indicative that the tenant was aware of an oncoming dispute regarding this matter; I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

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 within the timeframe required under the Act. The landlord's Notice to End Tenancy is valid and on that basis the landlord is entitled to an order of possession.

I also accept the landlord's testimony concerning the unpaid rent and I find that the landlord is entitled to recover the loss of rental income for January and February 2012 totalling \$1900.00.

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.

The landlord established a claim of \$1900. I authorize the landlord to retain the tenant's \$475.00 security deposit for a balance owing of \$1425.00. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$1425.00.

This Order may be registered 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: February 13, 2012.

Residential Tenancy Branch