



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNSD, 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 unpaid rent and for damage to the rental unit; to keep the security deposit; 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 7th, 2012, and provided a Canada Post tracking number. The tenant did not participate 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?
Is the landlord entitled to keep all or part of the security deposit?
Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of the upper level of a single detached home. Pursuant to a written agreement, the tenancy started on June 1st, 2010. The rent is \$1275.00 per month and the tenant paid a security deposit of \$200.00.

The landlord testified that the tenant is arrears with his rent since November 2011, and that no rent was paid for January and February 2012. In her documentary evidence, the

landlord provided a copy of the 10 Day Notice to End Tenancy served personally on the tenant on December 15, 2011. She also provided photographic evidence that the tenant broke a window, and a statement from her son stating that the tenant admitted to it. The landlord also provided a written estimate of \$686.92 for this repair.

The landlord submitted a monetary claim as follows:

- Unpaid rent for November 2011:	\$ 581.85
- Unpaid rent for December 2011:	\$ 425.00
- Late fee:	\$ 25.00
- Unpaid rent for January 2012:	\$1275.00
- Unpaid rent for February 2012:	\$1275.00
- Broken window:	\$ 686.92
- Filing fee:	\$ 50.00
- Total:	\$4318.77

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*. 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. The landlord's Notice to End Tenancy is valid and on that basis the landlord is entitled to an order of possession.

Based on the landlord's testimony and comprehensive documentary evidence, I accept that the tenant has not paid rent and that the tenant is also responsible for the broken window. Section 32 of the Act provides in part that a tenant must repair damage to the rental unit or common areas by the actions or neglect of the tenant. Accordingly I find that the landlord is entitled to recover the loss of rental income and a broken window as claimed.

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 \$4318.77. I authorize the landlord to retain the tenant's \$200.00 security deposit and pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$4118.77.

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 16, 2012.

Residential Tenancy Branch