



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 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; 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. He testified that he served the Notice of a Dispute Resolution Hearing to the tenants by way of registered mail sent on February 11, 2012, and provided a Canada Post tracking number. The tenants 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 fixed term tenancy started on October 1, 2011, and was to end

on September 30, 2012. The rent is \$1050.00 per month and the tenant paid a security deposit of \$525.00, and a pet damage deposit of \$250.00.

The landlord testified that the tenants did not pay rent for February 2012, and that he had been informed that the tenants are in the process of finding other accommodations. In his documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy served on the tenants in person on February 2, 2012.

The landlord submitted a claim as follows:

- Unpaid rent for February 2012:	\$1050.00
- Late fee (7 days at \$10.00 per day)	\$ 70.00
- Initial late fee:	\$ 25.00
- Total:	\$1145.00

Analysis

I accept the landlord's undisputed testimony that he served the tenants 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 tenants in this matter have 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.

Other than the filing fee, there is no provision for a party to make a claim under the Act for litigation costs or costs related to the dispute resolution process or the service of documents. Therefore I decline to make an award for serving the Notice to End Tenancy.

Concerning late fees, Section 7(1) of the Residential Tenancy Regulation provides in part that an administration fee of no more than \$25.00 may be charged for late payment of rent. Therefore I find the landlord's contractual terms unenforceable and I grant landlord \$25.00 for the late fees, as allowed by regulation.

I accept that the tenants did not pay rent for February 2012 and that the landlord is entitled to recover the loss of rental income for that month 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 \$1115.00. I authorize the landlord to retain the tenants' \$525.00 security deposit and \$250.00 pet damage deposit for a balance owing of \$340.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$390.00

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

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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 29, 2012.

Residential Tenancy Branch