



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, compensation for costs incurred, and a monetary order. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Is the landlord entitled to compensation for costs incurred?

Background and Evidence

The tenancy began on or about August 1, 2007. Rent in the amount of \$1250.00 is payable in advance on the first day of each month. The tenant failed to pay rent in the month(s) of October-December 2011 and on December 8, 2011 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of January-February 2012.

The landlord is seeking an order for \$5031.00 for unpaid rent, the recovery of the filing fee and is seeking 517.54 in utility costs and removal of garbage and furniture.

The tenant's were very forthright and clear that they knew what their responsibilities as tenants but only due to ongoing health problems and lack of employment that this situation arose. The tenants have had no desire to be in this position and were

apologetic for this happening. The tenants do not dispute that they have not paid the rent.

Analysis

I accept the undisputed testimony of both parties in regards to unpaid rent and I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the 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.

In regards to the utility costs and the costs of cleaning, the landlord had ample opportunity during the hearing to give testimony in this regard. The landlord was unclear as to the final costs, and the documentation provided by the landlord has some discrepancies. The documentation from the landlord requires the tenant to sign the "Chargeback Agreement", however no tenant signatures are on the document. In addition one of the charges is duplicated on two invoices. The tenancy agreement provided by the landlord is unclear as to who is responsible for utility costs. The landlord is the applicant in this matter and bears the responsibility of proving their claim. With the amount of uncertainty and insufficient evidence before me, I am not satisfied that the landlord has proven their claim and accordingly I dismiss this portion of the landlords claim.

As for the monetary order, I find that the landlord has established a claim for \$5031.00 in unpaid rent. The landlord is also entitled to recovery of the \$100.00 filing fee. I grant the landlord an order under section 67 for the balance due of \$5131.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$5131.00.

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 14, 2012.

Residential Tenancy Branch