



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for cause, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee.

The landlord participated in the conference call hearing but the tenant did not. The landlord presented evidence that the tenant was served with the application for dispute resolution and notice of hearing in person on March 7, 2012 and service was witnessed by the landlord's wife. I found that the tenant had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This tenancy began September 1, 2011 with monthly rent of \$800.00 and the tenant paid a security deposit of \$400.00 and a pet damage deposit of \$200.00.

On February 21, 2012 the landlord gave the tenant a Notice to End Tenancy for Cause; the tenant has not filed to dispute this notice.

The tenant has:

- been repeatedly late paying rent.
- significantly interfered with or unreasonably disturbed another occupant or the landlord.
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

On February 2, 2012 the landlord gave the tenant a Notice to End Tenancy for Unpaid Rent; the tenant has not filed to dispute this notice.

The landlord testified that the tenant vacated the rental unit on March 25, 2012 and left the key to the rental unit on the kitchen counter. The landlord stated that the tenant did not pay the March 2012 rent prior to vacating and the tenant had also not responded to the landlord's communications to complete a move out inspection. The landlord stated that the rental unit has suffered a significant amount of damage and was not cleaned when the tenant vacated.

As the landlord has possession of the rental unit the landlord no longer requires an order of possession and that portion of the landlord's application is hereby dismissed. The landlord is seeking a monetary order for \$800.00 for the unpaid March 2012 rent.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and I find that the landlord is entitled to a monetary order for unpaid rent.

Accordingly I find that the landlord is entitled to a monetary order for \$800.00.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$800.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee.

I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$400.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$450.00**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: March 28, 2012
