



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 all or part of the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

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 an apartment in an affordable housing unit complex. The tenancy started in September 2007. The rent is \$850.00 per month and the tenant paid a security deposit of \$225.00. Pursuant to the Residential Tenancy Branch interest calculated, to date the interest accrued on the deposit is \$4.52 for a security deposit totalling \$229.52.

The landlord testified that pursuant to a previous Residential Tenancy Branch (RTB) decision the landlord issued the tenant a Notice of Rent Increase of \$100.00 dated July 5, 2011, with an effective date of November 1, 2011. The landlord said that the tenant contacted RTB and was informed that the landlord misinterpreted the decision. He said that he in turn called RTB and was informed that the effective date of the rent increase was February 1, 2012. He said that the tenant has not paid the rent increase for February and March 2012.

In his documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy served on the tenant on February 9, 2012 by posting the notice on the tenant's door.

The tenant testified that since her income increased from the start of the tenancy, the landlord has not increased her rent in an amount that complies with the guidelines. She acknowledged receipt of the July Notice of Rent Increase, and stated that it was not signed or dated. She said that she anticipated service of a proper form in February, not a 10 Day Notice to End Tenancy.

The landlord referred to his documentary evidence and pointed to a letter to the tenant dated December 28, 2011, in which he reminded the tenant that the rent increase would take effect on February 1, 2012, and attached a copy of the original RTB decision.

Analysis

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.

Concerning the unpaid rent, Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. If the tenant did not agree with the rent increase, a remedy for the tenant would have been to seek assistance through RTB or dispute resolution when she was issued with the notice. I find that the tenant did not pay the full rent and that the landlord is entitled to recover the balance of rental arrears 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 \$200.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee for a claim totalling \$250.00. I authorize the landlord to retain the tenant's \$229.52 security deposit for a balance owing of \$20.48. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order of \$20.48. 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: March 13, 2012.
