



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

For the tenant: CNC

For the landlord: OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the landlord **and** an application by the tenant.

The tenant filed a late application on September 18, 2012 seeking to cancel a 1 Month Notice for Cause (Notice to End) issued August 30, 2012.

The landlord sought an Order of Possession due to Unpaid Rent pursuant to a Notice to end for Unpaid Rent issued September 06, 2012 and received by the tenant September 07, 2012. The landlord also sought a Monetary Order to recover rental arrears and inclusive of recovery of the filing fee associated with this application, and an Order to retain the security deposit in partial satisfaction of the monetary claim.

Both parties appeared in the conference call hearing and participated with their submissions and testimony. The tenant advised they are still residing in the rental unit. The tenant further advised that they did not serve the landlord with their Application and Notice of Hearing package and the landlord concurred they did not receive it. The RTB file indicates the tenant did not pick up their Notice of Hearing package subsequent to their application. As a result of the above, I preliminarily **dismiss** the tenant's application, without leave to reapply.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The testimony of the landlord and the tenant is that the tenancy began August 01, 2012. Rent in the amount of \$725.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$362.50. The tenant failed to pay rent in the month of September 2012, and the landlord served the tenant with a notice to end tenancy for non-payment of rent which the tenant testified they received on September 07, 2012. The tenant further failed to pay rent for the month of October 2012. The tenant testified they have not paid the rent for either month. The quantum of the landlord's monetary claim is for the rent arrears for the aforementioned 2 months in the amount of \$1450.00. The landlord further seeks an immediate Order of Possession.

The tenant does not dispute that the rent has not been paid and does not possess an Order from an Arbitrator allowing them to keep all of the rent, or that the tenant held back the rent, with prior notice to the landlord, for the cost of emergency repairs.

Analysis

Based on the testimony of the landlord and the tenant I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent and has not applied 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**.

Based on the above facts I find that the landlord is entitled to an **Order of Possession**. As for the Monetary Order, I find that the landlord has established a claim for **\$1450.00** in unpaid rent. The landlord is also entitled to recovery of the \$50 filing fee, for a total

entitlement of **\$1500.00**. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Rental Arrears	\$1450.00
Less Security Deposit and applicable interest <i>to date</i>	-362.50
Total Monetary Award	\$1137.50

Conclusion

The tenant's application is **dismissed**.

I grant an Order of Possession to the landlord **effective 2 days** from the day it is served upon the tenant. The tenant must be served with this 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.

I Order that the landlord retain the deposit \$362.50 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$1137.50**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: October 24, 2012

Residential Tenancy Branch