



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR; MNR; MNSD; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were mailed to the Tenant, via registered mail, to the rental unit on October 25, 2012. The Landlord provided the tracking numbers and registered mail receipt for the registered documents. The Landlord's agent stated that the documents were returned to the Landlord marked "unclaimed", so she placed a copy of the documents in the Tenant's mail box on November 22, 2012. The Tenant acknowledged receiving the documents on or about November 24, 2012.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Landlord's agent gave the following testimony and evidence:

This tenancy began on September 1, 1997. The rental unit is located in a building that provides subsidized rent. Market rent for the rental unit is \$1,014.00. The Tenant's monthly rent is \$400.00, due the first day of each month. The Tenant paid a security deposit in the amount of \$400.00 at the beginning of the tenancy.

The Tenant did not pay rent when it was due on October 1, 2012. On October 10, 2012, at 2:05 p.m., the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by handing the document to the Tenant at the rental unit. The Tenant has not disputed the Notice.

The Landlord's agent stated that when she filed the Landlord's Application for Dispute Resolution on October 24, 2012, the Tenant still owed \$300.00 for October rent, and

that the Landlord was seeking an award for loss of revenue for the month of November in the amount of \$400.00, totaling \$700.00.

The Landlord testified that the Tenant paid \$875.00 to the Landlord on October 30, 2012, and the Landlord provided the Tenant a receipt for “use and occupancy only” and did not reinstate the tenancy. The Landlord does not require a monetary award for unpaid rent anymore, since the amount paid by the Tenant exceeds the amount owed to the end of November by \$175.00.

The Landlord stated that she was seeking an Order of Possession effective December 31, 2012, because the Tenant has agreed to pay \$225.00 for use and occupancy of the rental unit for the month of December, 2012.

Analysis

I accept that the Landlord served the Tenant with the Notice to End Tenancy on October 10, 2012. The Tenant did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on October 20, 2012. I accept that the Landlord has not reinstated the tenancy. The Landlord seeks an Order of Possession effective December 31, 2012, and I find that it is entitled to that Order.

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the \$50.00 filing fee from the Tenant. Pursuant to Section 72(2)(b) of the Act, the Landlord may apply \$50.00 from the security deposit in recovery of the filing fee.

The remainder of the security deposit, together with accrued interest, must be applied in accordance with the provisions of the Act.

Conclusion

I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., December 31, 2012**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord may deduct **\$50.00** from the security deposit in recovery of the cost of the filing fee. The remainder of the security deposit, together with accrued interest, must be applied in accordance with the provisions of the Act.

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: November 29, 2012.

Residential Tenancy Branch