



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord on November 16, 2012 seeking an Order of Possession pursuant to a Notice to End Tenancy served in person on November 7, 2012. The landlord also sought a monetary award for the unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the tenants' security deposit in set off against the balance owed.

At the commencement of the hearing, the parties advised that the tenant had vacated the rental unit in mid November 2012, although a copy of his written notice submitted into evidence stated his intention to leave on November 30, 2012. In any case, the landlord no longer required the Order of Possession.

Issue(s) to be Decided

This application now requires a decision on whether the landlord is entitled to a monetary award for the unpaid rent and filing fee and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on September 1, 2012. Rent was \$600 per month and the landlord holds a security deposit of \$300 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence, and the tenant concurred, that the tenant had a rent shortfall of \$90 from October 2012 and had paid none of the rent for November 2012.

The tenant stated that he had not paid the rent because the landlord had entered his rental unit without notice on November 1, 2012 to turn off a light.

The tenant further argued that the landlord told him he had only two days to pay the rent after receiving the notice and that he subsequently offered the rent, but it was refused. The landlord stated that he had neither said the tenant had two days to pay nor had he been offered the rent.

The tenant acknowledged that he had noted the statement on the Notice to End Tenancy that advises tenant's that payment of the rent within five days extinguishes the notice and the tenant has the option of filing for dispute resolution within the five days to contest the notice.

Analysis

Section 26 of the *Act* states that:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy and he did, in fact, move out in compliance with the Order.

Section 67 of the *Act* authorizes the director's delegate to determine an amount owed by one party to a rental agreement to the other and to order payment. Accordingly, I

find that the tenant owes to the landlord the \$90 shortfall from October 2012 rent and the full rent for November 2012.

I also award the landlord recovery of the filing fee for this proceeding and, as empowered by section 72 of the *Act*, I authorize the landlord to retain the security deposit in set off against the unpaid rent.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Rent shortfall for October 2012	\$ 90.00
Filing fee	<u>50.00</u>
Sub total	\$740.00
Less retained security deposit (No interest due)	<u>- 300.00</u>
TOTAL	\$440.00

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$440.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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*.

As a matter of note, the Canada Post website does not show a postal code for the forwarding address provided by the tenant, so his copy of this decision will be sent to the rental unit as his last known address.

Dated: December 18, 2012.

Residential Tenancy Branch