



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, CNR, RR

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The Tenant applied on October 17, 2012 for:

1. An Order cancelling a Notice to End Tenancy – Section 46; and
2. An Order allowing the Tenant to reduce rent - Section 65.

The Landlord applied on November 1, 2012 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. An Order to retain the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

Preliminary Matter

This Hearing was set for 1:00 p.m. The Landlord appeared and the Hearing commenced at this time. I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail on November 1, 2012 in accordance with Section 89 of the Act. The Landlord was given full opportunity to be heard, to present evidence and to make submissions. The Landlords clarified that the first named Landlord in the Tenant's application is the current owner and the second named Landlord is the previous owner.

The Tenant did not appear and participate prior to the conclusion of the Hearing at 1:13 p.m. As the Tenant did not appear, I dismiss the Tenant's application.

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?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy began on March 15, 2012. Rent in the amount of \$950.00 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 \$475.00. The Tenant failed to pay rent for September 2012 and on September 2, 2012 the Landlord served the Tenant with a notice to end tenancy for non-payment of rent (the "Notice") by posting the Notice on the door. The Tenant did not file an application to dispute this Notice.

Between September 21 and 27, 2012 the Tenant paid the Landlord \$700.00 and the Landlord accepted this as payment of a previously issued monetary order for rental arrears in the amount of \$650.00 and set the remaining \$50.00 against September rent owing. The Tenant further failed to pay October rent and October 5, 2012 the Tenant paid \$300.00 to the Landlord. The Landlord accepted this money towards September 2012 rent owing, leaving rental arrears of \$600.00 owing for September 2012. The Tenant failed to pay November 2012 rent and has not moved out of the unit. The Landlord claims unpaid arrears of \$2,500.00.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's evidence 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. Although the Tenant filed an application to dispute the Notice, this application has been dismissed and based on the Landlord's evidence, I find that the Tenant failed to pay the rent. Given these facts, I find that the Landlord is entitled to an **Order of Possession** and has established a monetary claim for **\$2,500.00**. The Landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$2,550.00**.

The **security deposit** will be off-set from the award made herein.

Calculation for Monetary Order

Rental Arrears (September)	\$600.00
Rent (October and November \$950 x 2)	1,900.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and zero interest <i>to date</i>	-475.00
Total Monetary Award	\$2,075.00

Conclusion

I **grant** an Order of Possession to the Landlord. 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** and interest of \$475.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$2,075.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: November 21, 2012.

Residential Tenancy Branch