



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order. The hearing was conducted via teleconference and was attended by the landlord, his agent, the tenant and her witness.

At the start of the hearing the parties indicated that there had been a flood in the rental unit sometime between Christmas and New Year's and that the tenant has not been living in the rental unit but that her belongings are still there.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began sometime in 1998 or 1999 and is a month to month tenancy for the current monthly rent of \$840.00 due on the 1st of each month with a portion of the rent paid directly from the Ministry of Social Development and a portion paid by the tenant. The parties disagree on whether or not the landlord holds a security deposit.

The landlord provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on November 4, 2012 with an effective vacancy date of November 15, 2012 due to \$210.00 in unpaid rent. Testimony provided by the landlord indicates the tenant failed to pay the full rent owed for the months of October, November and December and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on November 4, 2012, the tenant acknowledged, in her testimony, that she received it the same date.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on November 4, 2012 and the effective date of the notice was November 15, 2012. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I accept the landlord's undisputed testimony of the value of the amount of unpaid rent for the months of October, November and December 2012. I note that since the tenant has not been able to live in the unit for the month of January 2013 due to the flood I find the tenancy has been frustrated and the landlord is not entitled to any rent for the month of January 2013.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,391.66** comprised of \$1,341.66 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: January 15, 2013

