



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD and FF
Tenant: ERP, RP and FF

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application of January 29, 2013, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent serve on January 17, 2013. The landlord also sought a monetary award for the unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By application received on January 24, 2013, the tenant sought to have the Notice to End Tenancy set aside and an order for repairs and/or emergency repairs to the rental unit.

As a preliminary matter, the tenant requested an adjournment as she was busy at work and had only a short break. As the issue of unpaid rent is straight forward and as the landlord's loss is growing, I felt it would unfairly prejudice the landlord to adjourn and denied the request.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession in support of the Notice to End Tenancy of January 17, 2013 and a monetary award as requested?

Is the tenant entitled to have the Order of Possession set aside and an order for repairs or emergency repairs?

Background and Evidence

As the property manager had just assumed responsibility for the rental building on January 17, 2013, he did not have a record of when the tenancy began, and the tenant did not recall.

However, the parties were aware that rent is \$750 per month and the landlord holds a security deposit of \$375.

During the hearing, the landlord gave evidence the Notice to End Tenancy had been served after the tenant had a rent shortfall of \$400 from the rent due on January 1, 2013.

In the interim, the tenant remains resident in the rental unit, the January rent shortfall remains outstanding and the tenant has not paid rent due on February 1, 2013.

The tenant stated that repairs were needed to the rental unit and she had made arrangements with the previous property manager. The current property manager had no record or knowledge of such arrangements. The tenant stated she could provide documentary evidence, but I found that she had had adequate time to make relevant submissions before the hearing.

The tenant stated that she was prepared to pay the outstanding rent, but the landlord confirmed that he still wished to end the tenancy and requested an Order of Possession.

The landlord requested a monetary award for the unpaid rent, recovery of the filing fee and authorization to retain the security deposit in set off.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due irrespective of any claims the tenant might have against the landlord for breach of the rental agreement or legislation.

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, while the tenant made application to contest the notice, I find that she did not pay the rent within five days of receiving it.

Therefore, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenant.

As the end of the tenancy is imminent, I find the tenant's request for repairs is moot, and as the landlord's application has succeeded with respect to the Order of Possession, the tenant's application is dismissed in its entirety without leave to reapply.

I find that the landlord is entitled to a Monetary Order for the unpaid rent and loss of rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off, calculated as follows:

Rent for shortfall for January 2013	\$ 400.00
Rent /loss of rent for February 2013	750.00
Filing fee	<u>50.00</u>
Subtotal	\$1,200.00
Less retained security deposit (No interest due)	<u>- 375.00</u>
TOTAL	\$ 825.00

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$825.00**, 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*.

Dated: February 19, 2013

Residential Tenancy Branch

