



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / retention of all or a portion of the security and pet damage deposit(s) / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on November 1, 2010. Monthly rent of \$975.00 is due and payable in advance on the first day of each month. A security deposit of \$487.50 and a pet damage deposit of \$487.50 were both collected.

Arising from rent which remained unpaid in full when due on January 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent dated January 3, 2013. The notice was served by way of posting on the tenant's door on that same date. A copy of the notice was submitted in evidence. Pursuant to section 90 of the Act which speaks to **When documents are considered to have been received**, the notice is deemed to be received 3 days later on January 6, 2013. Subsequently, the tenant made installment payments toward rent such that January's rent has now been paid in full. However, the full amount of January's rent was not paid within 5 days after January 6, 2013, the date when the tenant is deemed to have received the notice.

As to February's rent, presently, \$675.00 remains outstanding. Further to seeking a monetary order as compensation for this amount of unpaid rent, the landlord seeks to recover the \$25.00 fee assessed for late payment of February's rent, in addition to recovery of the \$50.00 filing fee.

Analysis

Based on the documentary evidence and testimony, I find the tenant was served with a 10 day notice to end tenancy for unpaid rent dated January 3, 2013. The tenant did not pay the full amount overdue within 5 days of receiving the notice, and did not apply to dispute the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Section 46 of the Act speaks to **Landlord's notice: non-payment of rent**. In sum, I find that the landlord has established entitlement to an **order of possession**.

As to compensation, I find that the landlord has established a claim of \$750.00:

\$675.00: *balance of unpaid rent for February 2013*

\$25.00: *fee assessed for late payment of February's rent*

\$50.00: *filing fee*

I order that the landlord retain **\$750.00** from the total security / pet damage deposit(s) collected of \$975.00 (\$487.50 + 487.50), leaving disposition of the balance of \$225.00 (\$975.00 - \$750.00) to be determined between the parties at the end of tenancy.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. 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 hereby order that the landlord retain **\$750.00** from the total security / pet damage deposit(s) collected of \$975.00.

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 07, 2013

Residential Tenancy Branch

