



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 convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - 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.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

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?

Background and Evidence

The following are agreed facts: The tenancy began on March 6, 2011. Rent of \$1,150.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$575.00 as a security deposit and \$250.00 as a pet deposit from the Tenant. The Tenant owed arrears and failed to pay rent for August 2013 and on August 5, 2013 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the “Notice”) by posting the Notice on the door. The Tenant

has not made an application for dispute resolution, has not paid the arrears and has not moved out of the unit. The Parties agree that the Tenant owes \$2,950.00 in unpaid rent including September 2013 rent.

The Tenant states that without expectation and upon his retirement in July 2013, he was unable to access pension funds that are being held for him and can only access these funds as a lump sum amount in January 2014. The Tenant states that in the past the rent has been prepaid in advance for as many as four months at a time and would like to negotiate a settlement with the Landlord in order to continue the tenancy. The Tenant states that they have a child that is finally able to attend school in the neighbourhood after a long wait and significant effort. The Landlord states that they do not wish to negotiate a settlement and want the Tenant to move out of the unit.

The Landlord claims \$2,950 in unpaid rent and recovery of the \$50.00 filing fee.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") 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 agreed facts, I find that the Tenant was served with a valid Notice. The Tenant has not filed an application to dispute the Notice and has not paid the outstanding rent. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. I make this Order of Possession effective at 1:00 p.m. on September 30, 2013. I also find on the agreed facts that the Landlord has established a monetary claim for **\$2,950.00** in unpaid rent. The Landlord is entitled to recovery of the **\$50.00** filing fee for a total monetary amount of **\$3,000.00**. Setting the combined security deposit and pet deposit of **\$825.00** plus zero interest off the entitlement leaves **\$2,175.00** owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on September 30, 2013. 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 \$825.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$2,175.00**. If necessary, this order may be filed in the Small Claims Court and 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: September 12, 2013

Residential Tenancy Branch

