



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This is an application filed by the Landlord for an order of possession and a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

At the beginning of the hearing the Landlord clarified that the Tenant made a partial rent payment for use and occupancy only and is now only in arrears for \$150.00. As such, the Landlord requests that the monetary claim be amended and lowered from the \$3,710.00 to \$150.00.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

There is no signed tenancy agreement, but the Landlord relies on facts on record from a previous Dispute Resolution Hearing File No. 813362 conducted between these two parties, which is:

The Tenancy began in either 2003 or 2004. The monthly rent is \$1,660.00 payable on the 1st of each month.

In that decision the Tenant confirmed in his evidence that outstanding rent for October 2013 was \$390.00. The Arbitrator also wrote, "I make no award for recovery of the filing fee as it was undisputed the tenant withheld rent and because the tenant's monetary claim was filed without sufficient particulars."

The Landlord states that a 10 day notice to end tenancy issued for unpaid rent dated November 2, 2013. The notice states that the Tenant failed to pay rent of \$2,050.00 that was due on November 1, 2013. The notice also notes, "\$390.00 for October 2013 and \$1,660.00 for November 2013". The effective date of the notice is November 12, 2013. The Landlord has also submitted a copy of a proof of service document which states that the Tenant was served by leaving personally with him on November 2, 2013 with a witness. The Landlord has submitted a copy of a cheque issued by the Tenant for \$1,950.00. It notes, "\$340.00 for October and \$1,610.00 for November". The Landlord states that the Tenant failed to pay the entire rent within the allowed time frame and is in arrears of \$100.00. The Tenant disputes the Landlord's claims, stating that the monthly rent is \$1,600.00 as opposed to the Landlord's claim of \$1,660.00. The Tenant relies on a witness statement of V.P. a previous property manager who states that the monthly rent for #424 was \$1,550.00 and should be

The Tenant has confirmed that upon being served with the 10 day notice to end tenancy that he did not pay the entire amount owed as per the notice and did not file an application for dispute resolution to dispute the notice. The Tenant confirmed that he did receive the notice and that he did receive it.

The Landlord seeks an order of possession and a monetary claim for \$150.00.

Analysis

I find on a balance of probabilities that I prefer the evidence of the Landlord over that of the Tenant. The Tenant confirmed in his direct testimony that upon receiving the notice on November 2, 2013 that he did not pay the rent amount owed nor did he file an application for dispute resolution. The Tenant is presumed to have accepted the notice. The Landlord has established grounds for an order of possession. The Landlord is granted an order of possession. The Tenant must be served with the 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.

As for the monetary claim, I find that based upon the evidence provided by the Landlord that a monetary claim for \$150.00 has been established. The Landlord is also entitled

to recovery of the \$50.00 filing fee. The Landlord is granted a monetary order for \$200.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Neither party was able to provide any details on the amount of the security deposit and as such, I decline to make any order for the security deposit as such.

Conclusion

The Landlord is granted an order of possession and a monetary order for \$200.00.

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: December 24, 2013

Residential Tenancy Branch

