



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC, RP, OPR, OPC, MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The Tenant applied on December 2, 2013 for:

1. An Order cancelling a notice to end tenancy – Section 46; and
2. An Order for repairs to the unit – Section 32.

The Landlord applied on November 19, 2013 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord 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 Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on August 1, 2011. Rent of \$720.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$347.50 as a security deposit from the Tenant. The tenancy agreement provides for a late rent fee of \$20.00. The Tenant failed to pay rent for November 2013 and on November 2, 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 is still in the unit and states that she has also not paid rent for December 2013 and January 2014 as her social assistance is being investigated. The Tenant states that she is moving out of the unit at the end of the month. The Landlord claims \$2,160.00 for rental arrears and \$60.00 for late fees.

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. As the Notice is deemed to have been received by November 5, 2013 and considering that the Tenant did not dispute the Notice within 5 days from this date, I find that the Tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the unit. The Tenant is therefore not entitled to a cancellation of the Notice and the Landlord is entitled to receive an order of possession. As the tenancy is ended, I dismiss the Tenant's claim for repairs to the unit.

Based on the undisputed evidence that rent has not been paid, I find that the Landlord has substantiated an entitlement to **\$2,220.00** for unpaid rent and late fees. The Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$2,270.00**. Deducting the security deposit of **\$347.50** plus zero interest leaves **\$1,922.50** owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord. 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 \$347.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,922.50**. 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: January 15, 2014

Residential Tenancy Branch

