



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 19, 2013, by the Landlord to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant's agent appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a month to month tenancy that began on September 1, 2008. Rent is subsidized and as of October 1, 2013, rent of \$513.00 is due on or before the first of each month. The Tenant had a previous accumulated balance owing for unpaid rent which she entered into a written repayment plan.

The Landlord testified that the Tenant stopped paying rent and stopped making payments towards the previously agreed upon repayment plan so on October 11, 2013, at 11:40 a.m. they posted a 10 Day Notice to the Tenant's door. The Tenant remains in the unit and has not made a payment towards rent or the past due amounts owing since August 2013.

The Tenant's Agent testified that the Tenant is willing to pay off the balance owing. She has been working but her job is slow and the Tenant has been ill in the recent past. The

Tenant has children who are very upset by this situation and do not want to have to move.

In closing, the Landlord stated that they have made every attempt to try and talk with the Tenant to make arrangements. However, the Tenant has made no attempts to resolve this issue or to start making payments. Therefore, they wish to proceed with their application.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on October 14, 2013, three days after it was posted to the door, and the effective date of the Notice is October 24, 2013.

The Tenant neither paid the rent nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **October 24, 2013**, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$2,370.00 that was due October 1, 2013, in accordance with section 26 of the *Act* which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I award the Landlord unpaid rent up to October 31, 2013, in the amount of **\$2,370.00**.

As noted above this tenancy ended **October 24, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for the three month period of November 2013 to January 2014.

The Landlord will not regain possession of the unit until after service of the Order of Possession and will have to find a new tenant; therefore, I award the Landlord use and occupancy and any loss of rent for the entire period of November 1, 2013 to January 31, 2014, in the amount of **\$1,539.00** (3 x \$513.00).

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days after service upon the Tenant**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be

filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$3,959.00** (\$2,370.00 + \$1,539.00 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia 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 16, 2014

Residential Tenancy Branch

