



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Background and Evidence

The landlord gave the following testimony:

The tenancy began on or about September 2012. Rent in the amount of \$1300.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$650.00. The tenant failed to pay rent in the month(s) of November 2013- January 2014 and on January 26, 2014 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of February - April. The landlord stated that the tenant has made partial payments and that the amount of unpaid rent as of today's hearing is \$4440.00.

The tenant gave the following testimony:

The tenant stated that she has made partial payments and was attempting to work this out with the landlord. The tenant stated that she withheld rent for good reason.

Analysis

The tenant stated that she was justified in withholding the rent however she did not have an order from the Branch or the landlords consent to do that. I accept the landlord's testimony and I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to 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 order, I find that the landlord has established a claim for \$4440.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. Although the landlord's application does not seek to retain the deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's \$650.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$3840.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$3840.00. The landlord may retain the security deposit.

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: April 08, 2014

Residential Tenancy Branch

