



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dream Carpets Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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. A Monetary Order for compensation – Section 67;
4. An Order to retain the security deposit - Section 38; and
5. 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 Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The Landlord states that there is a written tenancy agreement however a copy of this document was not provided as evidence.

The following are agreed facts: The tenancy began on March 1, 2014. Rent of \$850.00 is payable in advance on the first day of each month. The Tenant failed to pay rent for August 2014 and on August 6, 2013 the Landlord served the Tenant with a 10 day

notice to end tenancy for unpaid rent (the "Notice"). The Tenant has not made an application for dispute resolution to dispute the Notice, has not paid the rent and has not moved out of the unit. The Tenant has not paid rent for September and October 2014.

The Landlord claims unpaid rent of \$850.00.

The Landlord states that no security deposit was collected from the Tenant. The Tenant states that the previous tenant of the unit authorized the Landlord to transfer a \$425.00 security deposit to the Tenant's agreement and that the Tenant paid this amount to the previous tenant. The Tenant provided the name of the previous tenant. The Landlord states that this tenant informed the Landlord that he did not agree with transferring the security deposit and that the deposit belonged to this tenant's wife who has moved out of country. The Landlord states that he is holding this deposit for the previous tenancy.

The Landlord submits that the Tenant has not paid a filing fee cost that arose from a previous application by the Landlord. It is noted that this application was dismissed with leave to reapply. The Landlord claims \$25.00.

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. Section 55 of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the Notice by making an application for dispute resolution and the time for making that application has expired.

Based on the agreed facts I find that the Tenant was given a valid Notice. The Tenant did not file an application to dispute the Notice, has not paid the outstanding rent for August 2014 and has not moved out of the unit. Given these facts, I find that the

Landlord is entitled to an **Order of Possession**. I also find that the Landlord has established a monetary claim for **\$850.00** in unpaid rent for August 2014. As the current application did not include any claims for further unpaid rent I note that the Landlord remains at liberty in relation to any such unpaid rents. The Landlord is entitled to recovery of the **\$50.00** filing fee for a total monetary amount of **\$900.00**.

There is no provision for the recovery of a filing fee arising from a different application and I dismiss the claim for \$25.00. Given the lack of evidence to support the Tenant's oral evidence that the security deposit was paid or transferred by the previous tenant and considering the Landlord's plausible evidence, I find on a balance of probabilities that no security deposit was paid to the Landlord either by the Tenant or on behalf of the Tenant.

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 grant the Landlord an order under Section 67 of the Act for **\$900.00**. 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: October 16, 2014

Residential Tenancy Branch

