



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GARRISON PLACE APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR MNR MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 26, 2015, by the Landlord to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; and to keep the security deposit as partial satisfaction of their claim.

The hearing was conducted via teleconference and was attended by the Landlord. The Landlord gave affirmed testimony the Tenant was served with copies of their application for Dispute Resolution and notice of hearing documents in person on January 28, 2015, in the presence of a witness.

Based on the submissions of the Landlord I find that the Tenant was sufficiently served notice of this proceeding, in accordance with section 89 of the Act. Therefore, I continued in absence of the Tenant.

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 fixed term tenancy that began on December 1, 2009 that switched to a month to month tenancy after November 30, 2010. Rent of \$725.00 was initially due on or before the first of each month and was subsequently increased to \$785.00 per month. on December 1, 2009, the Tenant paid \$362.50 as the security deposit.

The Landlord testified that when the Tenant failed to pay their December 1, 2014 and January 1, 2015, rent the Landlord personally serve a 10 Day Notice to the Tenant's girlfriend who resides in the rental unit with the Tenant, and that service occurred on January 2, 2015. The Tenant remains in the rental unit and has not made a payment towards the past due rents owing.

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 received the 10 Day Notice on January 2, 2015, and the effective date of the Notice is January 12, 2015, pursuant to section 46 of the Act.

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, **January 12, 2015**, 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 accumulated (December and January) unpaid rent of \$1,570.00 (2 x \$785.00) that was due January 1, 2015, 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 accumulated unpaid rent up to and including January 2015, in the amount of **\$1,570.00**.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit plus interest as follows:

Unpaid December 2014 & January 2015 Rent	\$1,570.00
LESS: Security Deposit \$362.50 + Interest 0.00	<u>-362.50</u>
Offset amount due to the Landlord	<u>\$1,207.50</u>

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service 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 **\$1,207.50**. 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: February 18, 2015

Residential Tenancy Branch

