



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR, OPB, MNR, MND, MNDC, MNSD, RP, PSF, LRE, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, for compensation for damage or loss under the Act or tenancy agreement, for damages to the rental unit as well as to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of a security deposit.

The Tenant applied for an Order requiring the Landlord to make repairs, to provide services or facilities required under the Act or tenancy agreement and to put restrictions on the Landlord's right to enter the rental property. The Tenant also applied for the return of a security deposit and to recover her filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and if so, how much
3. Is the Landlord entitled to compensation for damages and if so, how much?
4. Is the Landlord entitled to keep all or part of the Tenant's security deposit?
5. Is the Tenant entitled to an order that the Landlord make repairs or provide services or facilities?
6. Is the Tenant entitled to an order placing restrictions on the Landlord's right to enter the rental property?

Background and Evidence

This month to month tenancy started on August 1, 2008. Pursuant to a written tenancy agreement, rent is \$765.00 plus utilities of \$48.00 per month, payable on the 1st day of each month. The Tenant paid a security deposit of \$382.50 at the beginning of the tenancy.

The Landlord said the Tenant has not paid rent and utilities for October and November, 2008. On November 8, 2008, the Landlord posted on the Tenant's door the Notice to End Tenancy for Unpaid Rent and Utilities dated November 8 2008. The Landlord claimed that the Tenant is still in arrears of rent for October and November, 2008. The Landlord claimed that the Tenant has not been seen on the rental property for approximately 7 – 8 weeks although his belongings are still in the rental unit. The

Landlord said that based on conversations he has had with the Tenant's references, he believes the Tenant is still residing in the general area.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the amount set out on the Notice or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit at that time. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or in this case, on November 11, 2008. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount within 5 days, or no later than November 17, 2008 (as the 16th falls on a Sunday).

I find that the Tenant has not paid the amount indicated on the Notice and has not applied for dispute resolution. Consequently, pursuant to section 46(5), the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (10 days after he is deemed to receive it), or on November 21, 2008. The Landlord requested and I find he is entitled to an Order of Possession to take effect immediately or on December 1, 2008. I also find that the Landlord is entitled to recover unpaid rent and utilities in the amount of \$1,626.00 as well as his \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4), 62(3) and 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will be entitled to a Monetary Order for the balance owing as follows:

Rent Arrears:	\$1,530.00
Utility Arrears:	\$96.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,676.00
Less: Security deposit:	(\$382.50)
Accrued interest:	<u>(\$1.83)</u>
TOTAL OWING:	\$1,291.67

Conclusion

A Monetary Order in the amount of **\$1,291.67** and an Order of Possession effective December 1, 2008 have been issued to the Landlord. A copy of the orders must be served on the Tenant; the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia and the Order of Possession may be enforced in the Supreme Court of British Columbia.