



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent 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 Landlord served the Tenant by registered mail on January 14, 2009 with a copy of the Application and Notice of Hearing in this matter which, according to the Canada Post on-line tracking system, he received on January 20, 2009. I find that the Tenant was properly served pursuant to s. 89 of the Act with the Notice of Hearing and the hearing proceeded in his absence.

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 keep all or part of the security deposit?

Background and Evidence

This tenancy started on June 1, 2008. Rent is \$850.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$425.00 at the beginning of the tenancy. The Landlord said as of January 1, 2009 the Tenant was in arrears of rent of \$2,550.00 as a result, on January 3, 2009 she posted a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities on the Tenant's door. The Landlord said the Tenant paid \$300.00 sometime after January 9, 2009 but that the balance of the rent arrears are still owed as well as rent for February, 2009.

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 January 6, 2009. 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 January 12, 2009 (as January 11th fell 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) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice or on January 16, 2009.

The Landlord requested and I find pursuant to s. 55(2)(b) of the Act that she is entitled to an Order of Possession to take effect at 1:00 p.m. on February 28, 2009. I also find that the Landlord is entitled to recover rent arrears for the period ending January 31, 2009 in the amount of **\$2,250.00**, pro rated rent for February 1 - 13, 2009 in the amount of **\$394.64**, a loss of rental income for February 14 – 28, 2009 in the amount of **\$455.36** as well as the **\$50.00** filing fee for this proceeding. Pursuant to s. 38(4), 62(3) and 72 of the Act, I order the Landlord to keep the Tenant's security deposit plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears to Jan. 31/09:	\$2,250.00
Rent arrears Feb. 1 – 13/09:	\$394.64
Loss rental income Feb. 14-28/09:	\$455.36
Filing fee:	<u>\$50.00</u>
Subtotal:	\$3,150.00
Less: Security Deposit:	(\$425.00)
Accrued Interest:	<u>(\$3.73)</u>
BALANCE OWING:	\$2,721.27

Conclusion

An Order of Possession effective at 1:00 p.m. on **February 28, 2009** and a Monetary Order in the amount of **\$2,721.27** have been issued to the Landlord and a copy of the Orders must be served on the Tenant. The Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.