



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 and pet damage deposit.

The Landlord said he served the Tenant in person on January 23, 2009 with a copy of the Application and Notice of Hearing in this matter. 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 their 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 Tenant's security deposit and pet damage deposit?

Background and Evidence

This fixed term tenancy started on January 1, 2008 and expires on February 28, 2009. Rent is \$840.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$420.00 and a pet damage deposit of \$200.00 on February 21, 2008. The Landlord said the Tenant did not pay rent for January, 2009 and therefore he posted a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities on her door on January 2, 2009.

The Landlord said the Tenant made a payment of \$400.00 on January 2, 2009, of \$520.00 on January 20, 2009 and a payment of \$460.00 on February 6, 2009. The Landlord said on each of those occasions, the Landlord gave the Tenant a receipt that indicated the payments were "for use and occupancy only" and therefore the Landlord did not intend to reinstate the tenancy. The Landlord claims the Tenant is in arrears of

rent of \$380.00 for February, 2009 rent, \$80.00 for parking and \$20.00 for a late payment fee for January, 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 5, 2009, 2008. Consequently, the Tenant would have had to pay the full amount on the Notice or apply to dispute that amount within 5 days, or no later than January 12, 2009 (as the 10th fell on a Saturday).

I find that the Tenant did not pay the full amount on the Notice by January 12, 2009 and did not apply for dispute resolution. Consequently, pursuant to section 46(5) of the Act, she is conclusively presumed to have accepted that the tenancy ends on the effective date (10 days after she is deemed to receive it), or on January 15, 2009.

The Landlord requested and I find he is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant. I also find that the Landlord is entitled to recover rent arrears of \$300.00, a late payment fee of \$20.00 as well as the \$50.00 filing fee for this proceeding. The copy of the tenancy agreement provided by the Landlord as evidence at the hearing does not contain a term regarding parking fees, and as a result, that part of the Landlord's claim is dismissed. Pursuant to s. 38(4), 62(3) and 72 of the Act, I order the Landlord to keep **\$370.00** of the Tenant's security deposit in payment of the damage award.

Conclusion

An Order of Possession effective 48 hours after service of it on the Tenant has been issued to the Landlord and a copy of it must be served on the Tenant. The Order of Possession may be enforced in the Supreme Court of British Columbia.