



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF (MNSD)

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession, a Monetary Order to recover unpaid rent and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were hand delivered to the Tenant on April 10, 2009.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

- Whether the Landlord is entitled to an Order of Possession?
- Whether the Landlord is entitled to a Monetary Order to recover unpaid rent?
- Whether the landlord is entitled to a Monetary Order to recover the filing fee?

Background and Evidence

This tenancy started on December 15, 2008. A verbal agreement between the Landlord and Tenant was in place. Rent was agreed at \$ 675.00 per month payable on the last day of each month. The tenant paid some of the security deposit of \$197.50. The landlord testifies that he has repeatedly asked the tenant to pay the rest of the security

deposit within 30 days of moving into the rental unit. This has still not been paid which leaves an outstanding amount of \$140.00.

The Tenant has not paid rent for April, 2009 which was due on March 31, 2009. The Tenant testifies that she had organised a crisis rent cheque to be issued with Social Services for \$675.00 which would cover her rent for April and that she would pay the rent for May at the same time. She testifies that the Landlord phoned Social Services and told them that she no longer lived in the rental unit so they cancelled the cheque. The Landlord disputes this. The Landlord testifies that he did phone Social Services to find out when the rent cheque would be paid and was told that the rent had been paid on the last Wednesday of the month so the Tenant would have received this in March to cover a portion of April's rent. When questioned, the Tenant admitted she did get the rent cheque in April but gave it to her boyfriend to pay the rent but he took it and did not pay the rent.

The Tenant feels she has made every effort to pay her rent and that it is the Landlord's fault because he has cut off the cable service to the rental unit and locked the laundry room door. The Tenant asked an Out Reach Community Support worker to join the call as a witness. However the witness had no first hand knowledge of events and left the call.

The Tenant testifies that she spoke to the Landlord and told him her boyfriend would be moving back into the rental unit and would take over paying the rent but they would like to change the due date to the first of each month. However, the remainder of the security deposit was still outstanding after 30 days from when the Tenant moved into the rental unit. The Landlord agreed but said that the security deposit must be paid in full first.

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. 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 April 05, 2009.

The Landlord requested and I find pursuant to s. 46(5) of the Act that he is entitled to an Order of Possession to take effect two days after service on the tenant. I also find that the Landlord is entitled to recover rent arrears for April, 2009 in the amount of \$675.00, as well as the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent for April	\$675.00
Less security deposit	-197.50
Total	\$527.50

Conclusion



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An order of Possession has been issued to the Landlord. A copy of the Orders must be served on the Tenant and the Tenant must vacate the rental unit **two days** after service. The Order of Possession may be enforced in the Supreme Court of British Columbia.

A Monetary order in the amount of **\$527.50** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount of the order is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: April 29, 2009.

Dispute Resolution Officer