



Dispute Resolution Services

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Residential Tenancy Branch
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 the Tenant's security deposit and pet damage deposit to offset rent arrears.

The Landlord served the Tenant with a copy of the Application and Notice of Hearing by registered mail on March 20, 2009. According to the Canada Post online tracking system, the Tenant received the hearing package on March 26, 2009. I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in his absence.

Issues(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 the Tenant's security deposit or pet damage deposit?

Background and Evidence

This tenancy started on April 1, 2008. Rent is \$1,650.00 per month (less a \$50.00 credit for hydro) payable on the 1st day of each month. The Landlord said he is uncertain as to whether the Tenant paid a security deposit or pet damage deposit. The Landlord claimed that the Tenant had arrears of rent from February, 2009 and did not pay rent for March, 2009 when it was due. As a result, the Landlord posted a 10 Day Notice to End Tenancy for Unpaid rent on the Tenant's door on March 5, 2009. The Landlord said that the Tenant paid \$700.00 on March 13, 2009 but did not pay the balance of the arrears until April 15, 2009. The Landlord said on both occasions the Tenant was given a receipt stating the payments were accepted "for use and occupancy only."

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,

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then under section 46(5) of the Act, he is 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 March 8, 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 March 13, 2008.

I find that the Tenant did not pay the rent arrears on the Notice until April 15, 2009 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 March 18, 2009.

The Landlord requested and I find he is entitled to an Order of Possession to take effect at 1:00 p.m. PST on May 18, 2009. I also find that there are no rent arrears for March, 2009 and that part of the Landlord's application is dismissed. As there is insufficient evidence as to whether a security deposit or pet damage deposit were paid and as there are no rent arrears for March, 2009 to offset, that part of the Landlord's application is dismissed with leave to reapply. I find that the Landlord is entitled to recover the \$50.00 filing fee for this proceeding.

Conclusion

An Order of Possession to take effect on May 18, 2009 and a Monetary Order in the amount of \$50.00 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 Court (Small Claims) Court of British Columbia.

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: May 14, 2009.

Dispute Resolution Officer