



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenant's security deposit to offset some of her damages.

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?

Background and Evidence

This tenancy started on November 1, 2008. Rent is \$950.00 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 the Tenant did not pay rent for March, 2009 when it was due and as a result, he served her in person on March 4, 2009 with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated March 4, 2009. The Tenant made a payment of \$950.00 on March 10, 2009 and was issued a receipt by the Landlord which stated it was "for use and occupancy only." The Tenant has also paid rent for April, 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. Consequently, in order to cancel the Notice the Tenant would have had to



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

pay the amount on the Notice or apply to dispute that amount within 5 days, or **no later than March 9, 2009**. I find that the Tenant paid the rent arrears **on March 10, 2009**. Consequently, pursuant to section 46(5) of the Act, she is conclusively presumed to have accepted that the tenancy would end on the effective date of the Notice (10 days after she received it), or on March 14, 2009.

The Landlord requested and I find pursuant to s. 55(2)(b) of the Act that he is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant. I find that March and April, 2009 rent is paid and therefore the Landlord's application for those rent arrears is dismissed. The Landlord is entitled to recover his \$50.00 filing fee and pursuant to s. 72 of the Act, he may deduct that amount from the Tenant's security deposit.

Conclusion

The Landlord's application to recover rent arrears for March and April, 2009 is dismissed and her application to keep the balance of the Tenant's security deposit is dismissed with leave to reapply. The Landlord has been issued an Order of Possession to take effect 48 hours after service of it on the Tenant. A copy of the Order must be served on the Tenant and may be enforced in the Supreme 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 06, 2009.

Dispute Resolution Officer