



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for loss of rental income and to recover the filing fee for this proceeding.

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 compensation for a loss of rental income?

Background and Evidence

This tenancy started on September 1, 2008. Rent is \$2,300.00 per month payable on the 1st day of each month. The Tenant was required to pay a security deposit but to date has not paid it. The Landlord claimed the Tenant did not pay October, 2008 rent when it was due and as a result, he served her in person on October 8, 2008 with a 10 Day Notice for Unpaid Rent dated October 3, 2008. The Landlord said he agreed to extend the date for payment of the arrears to October 16, 2008, then to February 2, 2009 and finally to April 17, 2009. In a written agreement originally dated October 11, 2008 and amended April 17, 2009 the Tenant agreed to move out within 24 hours if rent was not paid full on that date. The Landlord claims that the Tenant now has rent arrears for the period October 2008 to May 2009 and has only paid \$500.00 for June 2009 rent.

The Tenant does not dispute any of these matters but claimed that she has been waiting for a lump sum payment from Revenue Canada.

Analysis

Although the Landlord's Notice dated October 2, 2008 is on an old form, I find that it substantially complies with s. 52 of the Act in that it cites the current sections of the Act and provides correct information to the Tenant about disputing the Notice.

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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, she 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. In this case, I find that the Landlord extended the time to pay under the 10 Day Notice from October 8, 2008 to April 17, 2009. I also find that the Tenant has not applied to set aside the Notice because she did not dispute that she had (and still has) rent arrears for October, 2008.

Furthermore, I find that the Parties entered into a written agreement to end the tenancy within 24 hours in the event the accumulated rent arrears were not paid in full by April 17, 2009. Consequently, I find that the Landlord is entitled to an Order of Possession under s. 55(2)(b) as well as s. 55(2)(d) of the Act to take effect immediately or on June 4, 2009. On the basis of the undisputed evidence, I also find that the Landlord is entitled to recover rent arrears as follows:

| | |
|---------------------|-------------------|
| October 2008: | \$2,300.00 |
| November 2008: | \$2,300.00 |
| December 2008: | \$2,300.00 |
| January 2009: | \$2,300.00 |
| February 2009: | \$2,300.00 |
| March 2009: | \$2,300.00 |
| April 2009: | \$2,300.00 |
| May 2009: | \$2,300.00 |
| June 1-15, 2009: | <u>\$1,650.00</u> |
| Subtotal: | \$20,050.00 |
| Less Payment: | <u>(\$500.00)</u> |
| Total Rent arrears: | \$19,550.00 |

As the Landlord has been successful in this matter, I find that he is also entitled to recover his \$100.00 filing fee for this proceeding. The Landlord's application to recover loss of rental income for the balance of June and July, 2009 are dismissed with leave to reapply.

Conclusion

An Order of Possession to take effect June 4, 2009 and a Monetary Order in the amount of **\$19,650.00** have been issued to the Landlord and a copy of the orders must



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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.

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: June 04, 2009.

Dispute Resolution Officer