



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord seeking an Order of Possession and a monetary claim due to non-payment of rent by the tenant.

The tenant joined the conference call late and requested an adjournment. The tenant stated that she required an adjournment as she was recently in the hospital and was unable to prepare for this proceeding. The tenant did not provide any evidence to corroborate her claim, did not follow the rules of procedure in seeking an amendment by having the consent of the other party and making the request three (3) days before the scheduled hearing and could not satisfy me that the landlord would not be highly prejudiced if the adjournment was allowed.

I denied the tenant's request for an adjournment and proceeded with the hearing.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession and a monetary claim due to non-payment of rent by the tenant?

Background and Evidence

This tenancy began on approximately February 3, 2009 without the express permission of the landlord. The landlord stated that she was briefly away and on her return discovered that the tenant had occupied the rental unit. The only written documentation to establish a tenancy agreement was the application form the tenant filled out. Despite this the tenant was allowed to remain and paid a pro-rated portion of the rent and a security deposit. Neither party could recall on which day the security deposit was paid. The parties agree that the monthly rent is \$695.00 and the security deposit paid was 347.50.

On June 13, 2009 the tenant was served with a 10 day Notice to End Tenancy due to Unpaid Rent. The notice is deemed to have been received by the tenant three (3) days later on June 15, 2009. The tenant acknowledged receiving the notice and confirmed that she did not dispute the notice or pay the rent owed in the five (5) days provided under the Act.



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

On June 29, 2009 and July 8, 2009 the accepted \$695.00 as payment of May 2009 rent. The landlord submitted that she provided the tenant with receipts to confirm this fact, but did not provide the receipts as evidence. The tenant also paid \$100.00 on July 8, 2009 towards outstanding utility bills.

The tenant submitted that she has been in and out of the hospital in recent weeks. The tenant submitted that she paid July 2009 rent and did not consider it to be payment of the outstanding rent owed for May and June 2009. The tenant submitted that the landlord told her to disregard the notice to end tenancy and that they would work something out.

The landlord rejected the tenant's evidence that she had waived the notice to end tenancy but rather she has attempted to work with the tenant to find the means to vacate in an affordable fashion and with assistance. The landlord requested an Order of Possession and a monetary claim due to the tenant's failure to pay rent.

Analysis

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*.

I have reviewed all of the evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on June 15, 2009, and the effective date of the notice is amended to June 20, 2009 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. I do not accept the tenant's statement that the landlord waived the notice to end tenancy. Although I sympathize that the tenant has experienced medical difficulties in the last few weeks, this does not reverse her breach of a material term of the tenancy agreement. The most trivial breach, or in this case failure to pay rent as required results in the landlord's rights to seek an end to the tenancy. I am not persuaded that the landlord waived her right to seek to end this tenancy.

Therefore, the landlord's application is granted. I grant the landlord an Order of Possession effective **two (2) days** after it is served upon the tenant. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

I also find that the landlord has established a total monetary claim for the sum of \$1,440.00 comprised of outstanding rent for June and July 2009 plus the recovery of the \$50.00 filing fee paid for this application. From this sum I Order that the landlord may retain the tenant's security deposit of \$347.50 in partial satisfaction of this claim. I grant the landlord a monetary Order for the remaining balance owed of **\$1,092.50**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application is granted and an Order of Possession and a monetary Order issued due to the tenant's breach of the tenancy agreement and Act.

Dated: July 22, 2009.

Dispute Resolution Officer