



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPC, CNR, MNR, MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, for damages to the rental unit and to recover the filing fee for this proceeding. The Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent 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 utilities and if so, how much?
3. Is the Landlord entitled to compensation for damages and if so, how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on January 18, 2009 and was to expire on August 31, 2010. Rent is \$825.00 payable in advance on the 1st day of each month plus 30% of the utilities for the rental property. The Tenant paid a security deposit of \$412.50 at the beginning of the tenancy.

The Landlord said the Tenant did not pay rent for June 2009 when it was due and as a result on June 2, 2009 she posted a 10 Day Notice to End Tenancy for Unpaid Rent on the Tenant's door. The Tenant claims that he received the Notice on June 16th. Both Parties agree that rent for June and July 2009 has not been paid.

The Landlord also claimed that another tenant in the rental property had utility accounts for the rental property in their names and that they advised the Landlord that the Tenant was in arrears of his share of the utilities. The Landlord did not provide copies of invoices and the Tenant argued that he is up to date on utility payments. The Landlord also sought \$200.00 for damages that might exist when the tenancy ended.

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

Residential Tenancy Branch
Ministry of Housing and Social Development

that the tenancy ends on the effective date of the Notice and must vacate the rental unit at that time. Although the Tenant applied for dispute resolution, I find that there are no grounds for granting his application as I find that the Tenant has not paid the amount indicated on the Notice. Consequently, pursuant to section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy would end on the effective date or on June 26, 2009 at the latest.

Consequently, I find pursuant to s. 55(1) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant. I also find that the Landlord is entitled to recover rent arrears in the amount of \$1,650.00 as well as the \$50.00 filing fee for this proceeding. I find that there is insufficient evidence to support the Landlord's claim for unpaid utilities and that part of her claim is dismissed. I find that the Landlord's claim for damages to the rental unit is premature and that part of her claim is dismissed with leave to reapply. 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 arrears:	\$1,650.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,700.00
Less: Security Deposit:	(\$412.50)
Accrued Interest:	<u>(\$0.00)</u>
BALANCE OWING:	\$1,287.50

Conclusion

The Tenant's application is dismissed. An Order of Possession effective 48 hours after service of it on the Tenant and a monetary order in the amount of **\$1,287.50** have been issued to the Landlord. 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 (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: July 24, 2009.

Dispute Resolution Officer