



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 as well as to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started on December 1, 2008. Market rent is \$1,500.00 per month (payable in advance on the 1st day of each month) however, with a subsidy, the Tenant's rent is reduced to \$540.00 per month. Pursuant to clause 8 of the Parties' tenancy agreement, the Tenant must provide the Landlord with income verification information when requested by the Landlord (which is a Public Housing Authority) to demonstrate that she is eligible for the rental subsidy. The tenancy agreement also provides that the Landlord may increase the rent upon giving the Tenant 3 months notice. The Landlord sent 2 letters to the Tenant dated February 25, 2009 and March 25, 2009 which requested financial information and advised the Tenant that failure to do so would result in the rent being increased to \$1,500.00 per month effective May 1, 2009. The Landlord said the Tenant has not provided any financial information to date.

On June 8, 2009, the Landlord served the Tenant with a 10 Day Notice for Unpaid Rent and Utilities by posting a copy of the Notice on the Tenant's door. The Notice alleged that the Tenant was in arrears of rent of \$1,920.00 which represented the lost subsidy of \$960.00 per month for May and June 2009. The Landlord said she spoke with the Tenant's interpreter (which is her 14 year old daughter) after serving the 10 Day Notice and recommended that the Tenant obtain the advice of an advocate.

The Tenant, who does not speak English, claimed that she did not understand the Landlord's letters dated February 25, 2009 and March 25, 2009 or the 10 Day Notice but admitted that although the Landlord advised her to obtain the assistance of an advocate, she did not do so.



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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. 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 on June 11, 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 June 16, 2009.

I find that the Tenant has not paid the amount indicated on the Notice and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on August 31, 2009. I also find that the Landlord is entitled to recover rent arrears in the amount of \$420.00 for May 2009, \$960.00 for June 2009, \$960.00 for July 2009 and a loss of rental income for August 2009 of \$960.00. As the Landlord has been successful in this matter, she is also entitled to recover the \$50.00 filing fee for this proceeding. In summary, the Landlord will receive a monetary order as follows:

Rent arrears:	\$2,340.00
Loss of rental income:	\$960.00
Filing fee:	<u>\$50.00</u>
TOTAL:	\$3,350.00

Conclusion

An Order of Possession to take effect at **1:00 p.m. on August 31, 2009** and a Monetary Order in the amount of **\$3,350.00** 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 (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: August 10, 2009.

Dispute Resolution Officer