



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, MNR, MNDC, MNSD

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenant's security deposit to offset rent arrears.

At the beginning of the hearing, the Tenant applied for an adjournment of the hearing so she could attend her son's surgery. The Tenant admitted that she had known about the surgery date for approximately 2 months. The Landlord opposed the adjournment and argued that the Tenant was already in arrears of rent for 3 months. Given the prejudice to the Landlord if the matter did not proceed, the fact that the Tenant did not apply to set aside the Notice to End Tenancy, and the fact that this matter would not be reconvened for another 2 months, I dismissed the Tenant's application for an adjournment and the hearing proceeded with the Tenant's participation.

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 in December 2007. Rent is \$800.00 per month payable in advance on the 1st day of each month plus utilities. The Tenant paid a security deposit of \$400.00 at the beginning of the tenancy.

The Landlord claimed that the Tenant was repeatedly late paying her rent and did not pay rent when it was due for July so on July 17, 2009, he served the Tenant with a One Month Notice to End Tenancy for Cause. The Notice alleged that the Tenant was repeatedly late paying rent. The Tenant argued that the Landlord served her mother with the Notice but admitted that she also received the Notice on July 17, 2009. The Parties agree that the Tenant has not paid rent for July, August and September, 2009.

Analysis

Section 88 of the Act says that a document may be served on another person at the Tenant's residence as long as they apparently reside there. I find that the Notice to End



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

Tenancy was served on the Tenant's mother who does not reside with her. However, as the Tenant admitted that she did receive the Notice on July 17, 2009, I find pursuant to s. 71(2)(c) of the Act that she was sufficiently served for the purposes of the Act.

Section 47(5) of the Act says that if a Tenant does not apply to set aside a One Month Notice to End Tenancy for Cause within 10 days of receiving it, the Tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and must vacate the rental unit at that time. I find that the Tenant did not apply to set aside the Notice and as a result, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect on September 30, 2009.

I further find that the Landlord is entitled to recover rent arrears in the total amount of \$2,400.00. I also find that the Landlord is entitled to recover the \$50.00 filing fee for this proceeding. 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: | \$2,400.00 |
| Filing fee: | <u>\$50.00</u> |
| Subtotal: | \$2,450.00 |
| Less: Security deposit: | (\$400.00) |
| Accrued interest: | <u>(\$6.52)</u> |
| Balance Owing: | \$2,043.48 |

Conclusion

An Order of Possession to take effect on **September 30, 2009** and a Monetary Order in the amount of **\$2,043.48** have been issued to the Landlord and a copy of them 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: September 18, 2009.

Dispute Resolution Officer