



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, CNC, OPR, OPC, MNR, MNDC, (MNSD), 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. The Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent and a Notice to End Tenancy for Cause.

At the beginning of the hearing the Landlord applied to amend the application by including a claim to keep the Tenant's security deposit. As the Tenant did not object to this amendment, the Landlord's amendment was granted.

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?

Background and Evidence

This tenancy started on July 1, 2008. Rent is \$1,425.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$712.50 on June 25, 2008.

The Landlord's agents claimed that the Tenant did not pay rent for July and August 2009 when it was due and as a result on August 7, 2009, the Tenant was served in person with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities. An agent of the Landlord also posted a One Month Notice to End Tenancy for Cause on the Tenant's door on August 7, 2009. The One Month Notice alleged that the Tenant was "repeatedly late paying rent" and "has engaged in an illegal act that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord."

The Landlord's agents admitted that the Tenant had not engaged in an illegal act. They claimed however, that the Tenant was repeatedly late paying rent in that she had not paid rent for July, August and September 2009. The Landlord's agents also claimed that although the Tenant had permission to pay rent bi-weekly in May and June, 2009 she did not pay as agreed. The Landlord's agents also served the Tenant with 10 Day Notices dated August 20, 2009 and September 3, 2009 respectively.

The Tenant admitted that rent was outstanding for July, August and September, 2009. The Tenant argued, however, that the 10 Day Notice dated August 7, 2009 was invalid because the dispute address and the effective date of the Notice were left blank. The Tenant also disputed the One Month Notice dated August 7, 2009 as she claimed that she made bi-weekly payments as agreed except for in June when she had the Landlord's permission to pay that month's rent in full on June 26, 2009. The Tenant admitted that she paid ½ of the rent that day and ½ of the rent the following day because she could not withdraw the full amount from her bank on June 26th. The Tenant agreed that there were no defects in the 10 Day Notice dated August 20, 2009 that was served on her.

Analysis

Section 68(1) of the Act says that if a Notice to End Tenancy does not comply with s. 52 of the Act, the director may amend the notice if satisfied that the person receiving the notice knew, or should have known, the information that was omitted from the notice and in the circumstances, it is reasonable to amend the notice. The Tenant admitted that she knew the dispute address on the 10 Day Notice dated August 7, 2009 was with respect to the rental unit address where she resided. Consequently, I find that the Tenant knew the information that was missing from the 10 Day Notice dated August 7, 2009 and that it would be reasonable to amend it. Section 53 of the Act also permits the director to amend an incorrect effective date on a notice to a date that complies with the Act. In all other respects I find that it is a valid notice. I also find that the 10 Day Notice dated August 20, 2009 is a valid Notice.

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. Although the Tenant applied to dispute the 10 Day Notices dated August 7, 2009 and August 20, 2009, I find that there are no grounds for her application because rent remains unpaid for July and August 2009. Consequently, the Tenant's application to cancel the 10 Day Notices is dismissed and it is not necessary to deal with the One Month Notice to End Tenancy for Cause.

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 \$4,275.00 as well as the \$50.00 filing fee for this proceeding. However, as there was no evidence of a term of the tenancy agreement for the payment of late fees, I find that there is no authority to



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award those amounts. Pursuant to s. 38(4) of the Act, I order the Landlord to keep the Tenant's security deposit plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears:	\$4,275.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$4,325.00
Less: Security Deposit:	(\$712.50)
Accrued Interest:	<u>(\$5.55)</u>
Balance Owing:	\$3,606.95

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 **\$3,606.95** 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: September 29, 2009.

Dispute Resolution Officer