



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, 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 Landlord also applied to keep the Tenant's security deposit.

The Landlord said he served the Tenant in person on August 17, 2009 with a copy of the Application and Notice of Hearing. Based on the Landlord's evidence, I find that the Tenant was served as required under s. 89 of the Act and the hearing proceeded in his absence.

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 security deposit?

Background and Evidence

This tenancy started on March 1, 2009. Rent is \$1,290.00 per month payable in advance on the 1st day of each month plus 75% of gas, electric and city utilities for the rental property. The Landlord said the Tenant did not pay a security deposit

The Landlord said the Tenant had rent arrears for March 2009 and April 2009 rent and as a result, the Landlord served the Tenant in person on April 19, 2009 with a 10 Day Notice to End Tenancy for Unpaid Rent. The Landlord claimed that the Tenant made payments of \$500.00 on May 8, 2009, \$1,300.00 on May 23, 2009 and \$1,300.00 on September 4, 2009. The Landlord said the Tenant also signed a mutual agreement to End Tenancy dated July 29, 2009. The Landlord also said he sold the rental property to new owners on September 4, 2009.

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

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time. Although the Tenant did not apply to set aside the Notice, the Landlord admitted that he accepted payments from the Tenant after the effective date of the Notice. In the circumstances, I find that the Landlord reinstated the tenancy and that it would be unreasonable to allow him to enforce the 10 Day Notice more than 5 months later.

The Landlord also relied on a Mutual Agreement to End Tenancy dated July 29, 2009. Even if I was to amend the Landlord's application and grant him an Order of Possession pursuant to s. 55(2)(d) of the Act, I find that he is no longer the current owner or Landlord entitled to enforce an Order of Possession. In the absence of any evidence that the current and former owners have agreed that the former owner has assigned his rights under the Mutual Agreement to End Tenancy and the Application for Dispute Resolution, I find that there is no authority for me to grant an Order of Possession and his application for it is dismissed.

In the circumstances, it would be appropriate for the current owners/Landlords to serve the Tenant with a 10 Day Notice to End Tenancy for unpaid rent and apply for an Order of Possession which may be done on an expedited basis through the Direct Request process.

I find that there is sufficient evidence to award the Landlord a monetary order for rent arrears in the amount of \$4,600.00 for the period March 1, 2009 to August 31, 2009 (ie. $\$1,290.00 \times 6 = \$7,740.00 - \$3,100.00 = \$4,600.00$). In the absence of any evidence of the amount owed for utilities, that part of the Landlord's application is dismissed with leave to reapply. As there is no security deposit, that part of the Landlord's application is dismissed without leave to reapply.

Conclusion

A monetary order in the amount of **\$4,600.00** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court. The Landlord's application for an Order of Possession and to recover a security deposit is dismissed and his application for unpaid utilities is dismissed with leave to reapply. 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: October 02, 2009.

Dispute Resolution Officer