



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, CNR, 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, to recover the filing fee for this proceeding and to keep the Tenant's security deposit to partially offset those arrears. The Tenant applied to cancel a Notice to End Tenancy for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said he served the Application and Notice of Hearing on the Tenant on October 2, 2009 by posting it to his door. Section 89(1) of the Act says that an application for a monetary order must be served either in person or by registered mail. Consequently, I find that the Tenant was not properly served with the Landlord's application for a monetary order and that part of his application is dismissed with leave to reapply.

At the beginning of the hearing, the Tenant's agent requested an adjournment of the hearing as she said the Tenant advised her that he had an emergency. The Landlord claimed that he was advised by a member of the RCMP that the Tenant was arrested yesterday on outstanding warrants for fraud. The Landlord objected to an adjournment as he claimed he would lose more rent if this matter was delayed further. I find that the Tenant has had a reasonable opportunity (6 weeks) to submit any evidence in support of his application and that it would be prejudicial to the Landlord if he had to wait a further 6 weeks to have his application heard. Consequently, the Tenant's request for an adjournment is denied.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent?

Background and Evidence

This fixed term tenancy started on August 15, 2009 and expires on August 31, 2010. Rent is \$1,050.00 payable in advance on the 1st day of each month plus utilities. The

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Landlord said the Tenant paid a security deposit of \$525.00 by cheque at the beginning of the tenancy but it was returned for non-sufficient funds.

The Landlord said that the Tenant did not pay rent in full for August 2009 and did not pay rent for September, 2009 when it was due and as a result on September 22, 2009, he posted a 10 Day Notice to End Tenancy for Unpaid Rent on the Tenant's door. The Landlord admitted that he did not sign or date that Notice so he said he re-served a signed and dated 10 Day Notice by posting it to the Tenant's door on October 2, 2009. The Landlord claimed that the Tenant has paid nothing since he was served with the 10 Day Notice and is now in arrears of rent for October and November 2009.

The Landlord also said that in a telephone conversation with the Tenant yesterday, the Tenant claimed that he left an envelope with the rent money in it in a hiding spot in the rental unit and that it went missing after the Landlord and his realtor did a showing. The Landlord denied that either he or his realtor took any money from the rental unit.

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 overdue rent or apply for dispute resolution. Under s. 90 of the Act, the Tenant is deemed to have received the (signed copy of the) Notice to End Tenancy 3 days after it was posted, or on October 5, 2009.

Although the Tenant applied to dispute the Notice within the time limits required by the Act, I find that there are no grounds for the Tenant's application. In particular, I find that the Tenant has not paid rent arrears for August, September, October and November 2009. Even if the Tenant had paid the overdue rent yesterday, it still would have been too late to cancel the 10 Day Notice (which had to be paid no later than October 10, 2009). Consequently, the Tenant's application to cancel the 10 Day Notice to End Tenancy dated September 22, 2009 is dismissed and 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.

As stated above, the Landlord may re-apply for a monetary order for the unpaid rent, for the strata move in and move out fees, for the NSF charges and for the filing fee for this proceeding.



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Conclusion

The Tenant's application is dismissed. An Order of Possession effective 48 hours after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme 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: November 16, 2009.

Dispute Resolution Officer