



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, for a loss of rental income and to recover the filing fee for this proceeding.

The Landlord named a second tenant of this rental property (M.D.) in his application however he confirmed that he had a separate agreement with M.D. to rent the basement of the rental property. The Landlord claimed that the Tenant in this matter verbally agreed that he would collect the rent from M.D. and be responsible for paying the rent for the whole rental property. However, RTB Policy Guideline #13 at p. 2 says that tenants who share the same premises and enter into separate tenancy agreements with the landlord are tenants in common and are not responsible for the debts or damages relating to the other tenant or tenancy. I find that there are separate tenancies and as a result, the Landlord's application against M.D. in this matter is dismissed with leave to reapply.

The Landlord served the Tenant (who rents the upper level of the rental property) with the Application and Notice of Hearing by registered mail on January 7, 2010. According to the Canada Post online tracking system, the Tenant received the hearing package on January 22, 2010. I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in his absence.

Issues(s) to be Decided

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

Background and Evidence

This month to month tenancy started on September 1, 2009. Rent is \$1,700.00 per month payable in advance on the 1st day of each month (plus utilities). The Tenant paid a security deposit of \$850.00 at the beginning of the tenancy.



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The Landlord said the Tenant did not pay rent for December 2009 when it was due and as a result, on December 22, 2009 he served an adult who apparently resides in the rental unit in person with a 10 Day Notice to End Tenancy for unpaid rent dated December 22, 2009. The Landlord claimed that the Tenant still has not paid rent for December 2009 and is also in arrears of rent for January 2010.

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. 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 they must vacate the rental unit at that time. The Tenant is deemed under s. 88 of the Act to have received the 10 Day Notice to End Tenancy on December 22, 2009 and therefore he had until December 27, 2009 to either pay the overdue rent or apply for dispute resolution to dispute the Notice.

I find that the Tenant has not paid the overdue rent 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 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 \$3,400.00 as well as the \$50.00 filing fee for this proceeding.

Conclusion

The Landlord's application for a loss of rental income is dismissed with leave to reapply. An Order of Possession effective 48 hours after service of it on the Tenant and a monetary order in the amount of **\$3,450.00** 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: February 01, 2010.

Dispute Resolution Officer