

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, FF
CNR, AS, RR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated March 8, 2010, for an Order that the Landlord permit her to assign or sublet and for an Order permitting her to reduce rent as well as to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with a copy of his application and Notice of Hearing by registered mail on March 24, 2010. Based on the evidence of the Landlord, I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there arrears of rent and utilities and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started as a fixed term tenancy on August 16, 2007 which expired on March 1, 2008 and continued on a month to month basis thereafter. Rent was \$2,400.00 per month payable in advance on the 1st day of each month plus utilities. The Tenant paid a security deposit of \$1,150.00 at the beginning of the tenancy.

The Landlord said he tried to serve the Tenant in person on March 8, 2010 with a copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated March 8, 2010 however she would not accept it. Consequently, the Landlord said he posted the Notice on the rental unit door on March 9, 2010 and also sent it by registered mail on March 12, 2010. The Notice alleged that the Tenant had rent arrears of \$3,730.00 that were due on March 1, 2010.

The Landlord provided copies of invoices (all but one of which were initialled by the Tenant) that showed rent charges and the Tenant's payments (and other credits) for each month. The Landlord said the Tenant signed a Mutual Agreement to End the Tenancy on February 23, 2010 that was to take effect on April 30, 2010. The Landlord also said that the Tenant did not make any payments on the rent and utility arrears after February 26, 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 rent is not owed. Although the Tenant filed an application to dispute the Landlord's 10 Day Notice, I find on a balance of probabilities that the Tenant has not paid overdue rent and as a result, her application to cancel the 10 Day Notice to End Tenancy dated March 8, 2010 is dismissed without leave to reapply. I also find that the Parties had an agreement to end the tenancy on April 30, 2010. Consequently, I find pursuant to s. 55(2)(b) and 55(2)(d) of the Act that the Landlord is entitled to an Order of Possession to take effect immediately.

I also find that the Landlord is entitled to recover rent and utility arrears in the amount of \$6,160.00 (to the end of April 2010) as well as the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act 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 & utility arrears:	\$6,160.00
Filing fee:	<u>\$100.00</u>
Subtotal:	\$6,260.00
Less: Security Deposit:	(\$1,150.00)
Accrued Interest:	<u>(\$23.87)</u>
BALANCE OWING:	\$5,086.13

As the tenancy has ended and as there is no evidence to support the Tenant's applications for a rent reduction and to assign or sublet, those parts of her application as well as her application to recover the filing fee for this proceeding are dismissed without leave to reapply.

Conclusion

The Tenant's application is dismissed without leave to reapply. An Order of Possession to take effect immediately and a Monetary Order in the amount of **\$5,086.13** 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: May 04, 2010.

Dispute Resolution Officer