



Dispute Resolution Services

Page: 1

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 Landlords for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on May 1, 2009 when the Tenant took over the tenancy from his previous co-tenants (who moved out). Rent is \$800.00 per month payable in advance on the 1st day of each month.

The Landlord (L.K.B.) said the Tenant had rent arrears of \$400.00 for April 2010 and did not pay rent for May and June 2010. Consequently, on June 21, 2010, the Landlord served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord said that rent is also unpaid for July and August 2010.

The Tenant admitted that rent was unpaid for May, June, July and August 2010 but claimed that the Landlord refused to accept a payment from him when he offered it on May 31, 2010. The Tenant admitted that he did not offer to pay the rent after he received the 10 Day Notice but claimed his co-tenant did offer to make a payment which the Landlord refused. The Tenant said he was unsure if there were rent arrears for April 2010 because he was unsure if his co-tenant (who resided there from January to June 2010) paid his share of the rent to the Landlord that month.

The Landlord admitted that he would not accept any rent payments from the Tenant or his co-tenant after he served the Tenant with the 10 Day Notice. The Landlord claimed that the Tenant's co-tenant did not pay his share of the rent for April 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 to dispute the Notice. If a Tenant fails to do either of these things,



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

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. Although the Landlords refused to accept rent payments from the Tenant's co-tenant after he served the 10 Day Notice on the Tenant, the Tenant did not apply to dispute the Notice. 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 2 days after service of it on the Tenant.

RTB Policy Guideline #13 (Rights and Responsibilities of Co-Tenants) at p. 1 says that "if there is no written agreement, the person who made the oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are 2 or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the Landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord."

I find on a balance of probabilities that there are rent arrears of \$400.00 for April 2010 and that rent is unpaid for the months of May, June, July and August 2010. Consequently, the Landlords are entitled to recover rent arrears in the amount of \$3,600.00 as well as the \$50.00 filing fee for this proceeding.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$3,650.00** have been issued to the Landlords. 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: August 23, 2010.

Dispute Resolution Officer