



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, 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, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord's agent said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on November 19, 2010 and that the Tenant received it on November 22, 2010. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package 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 rent arrears and if so, how much?

Background and Evidence

This month-to-month tenancy started on October 23, 2009. Rent is \$875.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$437.50 at the beginning of the tenancy.

The Landlord's agent said the Tenant did not pay November 2010 rent when it was due and as a result, on September 2, 2010 another agent for the Landlord (ie. the building manager) served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2010. The Landlord's agent said the Tenant made a payment of \$480.00 on November 12, 2010 and a payment of \$880.00 on November 30, 2010 and was issued a receipt for "use and occupancy for the latter payment. The Landlord's agent said the Landlord did not intend to reinstate the tenancy by accepting the late rent payments. The Landlord's agent also said the Tenant currently has rent arrears for December 2010 of \$390.00.

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. I find that the Tenant was served with the 10 Day Notice to End Tenancy on November 2, 2010. Consequently, the Tenant would have had to pay the overdue rent indicated on the Notice by November 8, 2010 or apply to dispute that amount no later than November 8, 2010 (given that the 7th fell on a Sunday).

I find that the Tenant did not pay the overdue rent within 5 days of receiving the 10 Day Notice 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 2 days after service of it on the Tenant.

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Under section 45 of the Act, a Tenant of a month-to-month tenancy must give a Landlord one clear month's written notice to end a tenancy. Given that the Tenant received the 10 Day Notice on November 2, 2010, the earliest the Tenant could have ended the tenancy (had he given written notice on that day) would have been December 31, 2010. As a result, I find that the Landlord is entitled to recover loss of rental income for the balance of December 2010 in the amount of \$390.00.

Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. As it is still possible that the Landlord may rent out the rental unit for January 2011, I find that the Landlord's application for a loss of rental income for that month is premature and it is dismissed with leave to reapply.

As the Landlord has been successful in this matter, I find that she is entitled pursuant to s. 72 of the Act to recover the \$50.00 filing fee for this proceeding from the Tenant. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the monetary award. The Landlord will receive a monetary order for the balance owing as follows:



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Loss of rental income	
For December 2010:	\$390.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$440.00
Less: Security Deposit:	<u>(\$437.50)</u>
Balance Owing:	\$2.50

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$2.50** 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: December 09, 2010.

Dispute Resolution Officer