



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord's application also names another individual (H.M.) as a Tenant, however that person is not a party to the written tenancy agreement dated December 1, 2008 and therefore I find that he is not properly named as a party in these proceedings. Consequently, the style of cause in this matter has been amended to remove H.M. as a Party.

The Landlord said her building manager served the Tenant in person on December 20, 2010 with a copy of the application and Notice of Hearing (the "hearing package"). 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.

Issue(s) to be Decided

1. Are there 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 December 1, 2008. The Parties' tenancy agreement shows that rent is \$565.00 per month payable in advance on the 1st day of each month. The Landlord claimed that there was a verbal agreement that rent would be \$565.00 per month only if it was paid when due and that if rent was late, it would be \$615.00 per month.

The Landlord said the Tenant did not pay rent for October and did not pay November 2010 rent when it was due and as a result, on November 20, 2010, she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 20, 2010 by posting it to the rental unit door. The Landlord said the Tenant has not made any payments on those rent arrears and now has rent arrears for December 2010 and January 2011.

Analysis

Section 7 of the Regulations to the Act states that a Landlord may only charge a maximum of \$25.00 for a late fee provided that there is a term in the Parties' tenancy agreement to that effect. As the Parties' tenancy agreement does not contain a term regarding the payment of late fees, I find that the Landlord may only recover rent of \$565.00 per month as set out in the tenancy agreement. In the absence of any evidence from the Tenant to the contrary, I find that rent is unpaid for the months of October, November and December 2010 in the total amount of \$1,695.00. I also find that the Tenant has not paid rent for January 2011 and as a result, I award the Landlord \$200.48 for unpaid rent pro-rated to January 11, 2011 as well as a loss of rental income for a further 4 days in the amount of \$72.90.

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. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on November 23, 2010. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than November 29, 2010 (given that the 28th fell on a Sunday).

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 2 days after service of it on the Tenant. I also find that the Landlord is entitled pursuant to s. 72 of the Act to recover 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 **\$2,018.38** 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: January 11, 2011.

Residential Tenancy Branch