



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, (MNSD), FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent and utilities and to recover the filing fee for this proceeding.

At the beginning of the hearing the Tenant said she did not receive an evidence package from the Landlords. The Tenant admitted that she gave her mailing address to the Landlords on December 31, 2010. The Landlords provided proof of service of their evidence package by way of a Canada Post registered mail receipt that shows it was mailed to the Tenant at her mailing address on January 11, 2011. Consequently, I find that the Tenant was properly served with the Landlords' evidence package.

Issue(s) to be Decided

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

Background and Evidence

This fixed term tenancy started on July 1, 2010 and was to expire on June 30, 2011. Rent is \$1,350.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$675.00 at the beginning of the tenancy.

The Landlords said that the Tenant did not pay rent for December 2010 and had accumulated utility arrears of \$850.50 since July 2010 and as a result on December 21, 2010 they served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 21, 2010. The Landlords said the Tenant has not paid the rent and utility arrears. The Landlords also said that they made 3 appointments with the Tenant to complete a move out inspection and to collect the keys to the rental unit but the Tenant did not show up for any of those appointments and then refused to return their calls or messages. The Landlords said the Tenant has still not returned the keys and as a result, they have been unable to determine if she vacated the rental unit or not. The Landlords said the Tenant also left a number of belongings on the patio outside of the rental unit. Consequently, the Landlords also sought to recover unpaid rent for January 2011.

The Tenant admitted that she had not paid rent for December 2010 but argued that she should not be responsible for January 2011 rent since the Landlords had evicted her. The Tenant also argued that the Landlords had not given her a copy of the utility bills until November 2010 which the Landlords denied. The Tenant admitted that she still had the keys to the rental unit and agreed that she would arrange to have them dropped off at the Landlords' residence (or address on their application) no later than January 23, 2010. The Tenant said that she was unaware that any of her belongings had been left behind on the rental property, that she would not be returning for them and that the Landlords could dispose of them.

Analysis

The Landlords said that they served the Tenant in person on December 21, 2010 with a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated December 21, 2010. The Tenant admitted that she received this Notice however the Landlords did not provide a copy of this Notice as evidence at the hearing or after though they were given an opportunity to do so. The Landlords said the Notice showed that rent of \$1,350.00 due on December 1, 2010 was unpaid and that there were also utility arrears of \$850.00 which the Tenant did not dispute.

Section 46(2) of the Act says that a 10 Day Notice to End Tenancy must comply with s. 52 of the Act. Section 52 of the Act says that a Notice to End Tenancy when given by a Landlord must contain specific information (as set out in that section) and be in the approved form. In the absence of a copy of the 10 Day Notice, I cannot conclude that it is an effective Notice and the Landlords' application for an Order of Possession is dismissed without leave to reapply. However, the Tenant confirmed at the hearing of this matter that she has vacated the rental unit and that she still has the keys but does not intend to return to the rental unit. As a result, I find that the tenancy ended effective January 20, 2011.

I find that the Landlords are entitled to recover unpaid rent for December 2010 in the amount of \$1,350.00 as well as unpaid utilities for July 2010 to November 19, 2010 in the amount of \$850.50. The Tenant argued that she moved out pursuant to the 10 Day Notice and therefore should not be responsible for rent for January 2011. However, as indicated above, I find that the Tenant did not advise the Landlords that she had vacated the rental unit until January 20, 2011 and did not return the keys to the Landlords so they could gain access to the rental unit. Furthermore, I find that the Tenant (knowingly or unknowingly) left belongings outside of the rental unit which led the Landlords to hold a reasonable belief that the Tenant had not vacated. Consequently, I find that the Landlords are entitled to unpaid rent for the period January 1 – 20, 2010 in the pro-rated amount of \$870.97.

Even if the tenancy had ended on December 31, 2010 as the Tenant argued, I would still find that she would be responsible for a loss of rental income for January 2010. 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. Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. Consequently, the earliest the Tenant could have ended the tenancy would have been June 30, 2011. In other words, because the Tenant breached the tenancy agreement by failing to pay rent, the Landlords are entitled to end the tenancy and recover a loss of rental income for the balance of the fixed term subject to their duty under s. 7(2) of the Act to mitigate their losses by re-renting the rental unit as soon as possible. However, the Landlords did not apply for a loss of rental income.

Section 72(2) of the Act says that if the Director orders a tenant to pay any amount to the landlord, the amount may be deducted from any security deposit due to the tenant. Consequently, I order the Landlords pursuant to s. 38 of the Act to keep the Tenant's security deposit in partial payment of the unpaid rent and utilities. The Landlords will receive a Monetary Order for the balance owing as follows:

Unpaid Rent – December 2010:	\$1,350.00
Unpaid Rent – Jan. 1 – 20, 2011:	\$870.97
Unpaid Utilities:	<u>\$850.50</u>
Subtotal:	\$3,071.47
Less: Security deposit:	<u>(\$675.00)</u>
Balance owing:	\$2,346.97

As the Landlords have been successful in this matter, I also find that they are entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. As a final matter, I Order the Tenant pursuant to s. 62(3) of the Act to return the rental unit keys to the Landlords no later than January 23, 2011 after which the Landlords will be at liberty to change the locks on the rental unit and apply to recover the cost from the Tenant.

Conclusion

The Landlords' application for an Order of Possession is dismissed without leave to reapply. A Monetary Order in the amount of **\$2,396.97** has been issued to the Landlords and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court. 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 20, 2011.

Residential Tenancy Branch