



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on January 22, 2011. 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 with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started on August 1, 2010 as a month to month tenancy. Rent is \$750.00 per month payable in advance of the 1st day of each month. A security deposit of \$375.00 was paid around August 1, 2010. The Landlord said the Tenant is living in the rental unit and he requested an Order of Possession.

The Landlord son said that the Tenant did not pay \$300.00 of rent for December, 2010 and \$750.00 of rent for January, 2011. As a result, on January 11, 2011, he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated January 11, 2011 to the Tenant. The Landlord continued to say that the Tenant also has unpaid rent for February 2011 of \$750.00.

The Landlord said his total claim is for unpaid rent of \$300.00 for December, 2010 and unpaid rent of \$750.00 for each month of January and February, 2011, as well as the recovery of the filing fee for this proceeding of \$50.00 for a total amount of \$1,850.00.

The Tenant said that she agreed with the amount of unpaid rent that the Landlord has applied for and she mentioned that she would like to work some arrangement out with the Landlord. The Tenant said she would pay the Landlord \$750.00 on Thursday, February 10, 2011 and she would move out of the rental unit on February 27, 2011. As well the Tenant said she would make a payment arrangement with the Landlord for the remaining unpaid rent when she moved out.

The Landlord agreed with the Tenant's proposal to accept \$750.00 on February 10, 2011 and if that payment was made he would agree that the Tenant could stay in the rental unit until February 27, 2010. The Landlord also requested an Order of Possession effective 2 days after service of it if the Tenant did not pay the \$750.00 on February 10, 2011.

The Tenant understood and agreed with the Landlord's request for an Order of Possession.

Analysis

Pursuant to section 62 of the Act that states that parties in a dispute can settle their dispute themselves and it can be written as an Order of the Director. During the hearing the Landlord and Tenant agreed to a rent payment of \$750.00 by the Tenant on February 10, 2011 at 8:30 am and that if the Tenant made that payment she could reside in the rental unit until February 27, 2011, at which time she would move out of the unit and make arrangements with the Landlord for any remaining unpaid rent. If this arrangement is not completed as agreed then the Landlord requested an Order of Possession as soon as possible and a monetary Order for the unpaid rent. Therefore, I order that if the payment of \$750.00 is not made at 8:30 am on February 10, 2011 then the arrangement is void and the following decision is in effect.

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 pay the overdue rent or apply for dispute resolution. If the 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 on the day it was served, or on January 11, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than January 16, 2011.

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 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for December, 2010 in the amount of \$300.00 and \$750.00 for each month of January and February, 2011 in the amount of \$1,500.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant 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 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$1,800.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,850.00
Less:	Security Deposit	\$375.00	
	Subtotal:		\$ 375.00
	Balance Owing		\$1,475.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,475.00 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*.

Residential Tenancy Branch