



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, FF
 CNR

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in partial payment of those amounts. The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 19, 2011.

The Landlord's counsel said he served the Tenant in person on January 27, 2011 with a copy of the Application and Notice of Hearing (the "hearing package") and at the same time received from the Tenant her hearing package in this matter. 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. Does the Landlord have grounds to end the tenancy?
2. Are there rent and utility arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit and pet damage deposit?

Background and Evidence

This tenancy started on December 1, 2009. Rent is \$1,550.00 per month payable in advance on the 1st day of each month plus utilities. The Tenant paid a security deposit of \$775.00 and a pet damage deposit of \$775.00 at the beginning of the tenancy. The property was sold (under foreclosure proceedings) to the current owners on December 1, 2010 with a possession date of December 17, 2010.

The Landlord's counsel claimed that on February 4, 2011, Master Young of the Supreme Court of British Columbia made the following Orders:

- That the Tenant deliver vacant possession of the rental unit to the Landlord no later than February 28, 2011; and
- That in lieu of notice, the Tenant would not be responsible for paying rent for December 2010 and January 2011.

Counsel for the Landlord said he is unsure if the Tenant has appealed that Order and even if she has not, he claimed that the time for appealing it has not yet expired. Consequently, the Landlord sought an Order of Possession based on unpaid rent and utilities. The Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 19, 2011 which shows unpaid rent of \$2,250.00. The Landlord's submissions indicate that \$700.00 of this amount is for rent for the period, December 15 – 31, 2010, and \$1,550.00 of this amount is for rent for January, 2011. The Landlord said the Tenant has not paid rent for February 2011 and has unpaid utilities to January 31, 2011 of \$2,393.23.

Analysis

Section 94 of the Act says that “despite any other enactment, no order of a court in a proceeding involving a foreclosure (and other matters) that affects the possession of a rental unit is enforceable against a tenant of the rental unit unless the tenant was a party to the proceeding.” There was no evidence provided by either Party as to whether the Tenant was named as a Party in the foreclosure proceedings.

Notwithstanding s. 94 of the Act, s. 58(4) of the Act states that the Supreme Court may hear a dispute (of the nature set out in sub-section 2) and may make an order that the director may make under the Act. Section 58(2) of the Act says that the director must determine a dispute *unless the dispute is linked substantially to a matter that is before the Supreme Court*. Based on the evidence of the Landlord, I find that there is an Order of the Supreme Court ending the tenancy effective February 28, 2011 and therefore, I find that it would not be appropriate to grant the Landlord's application for an Order of Possession in this hearing.

Furthermore, given that the Order of the Supreme Court made on February 4, 2011 released the Tenant from the obligation to pay rent for December 2010 and January 2011, I find that the 10 Day Notice dated January 19, 2011 is unenforceable because that rent alleged to be in arrears is not owed. In the absence of any evidence from the Tenant to the contrary, however, I find that the Tenant has not paid rent for February 2011 and has utility arrears to January 31, 2011 in the amount of \$2,393.23. As the Landlord has been successful in this matter, I also find that he is entitled pursuant to s. 72(1) of the Act to recover the \$100.00 filing fee for this proceeding from the Tenant.

I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit and pet damage deposit in partial payment of the damage award. The Landlord will receive a Monetary Order for the balance owing as follows:

Unpaid Rent, Feb. 1-17, 2011:	\$941.07
Loss of Rental income, Feb. 18-28, 2011:	\$608.93
Unpaid Utilities to Jan. 31, 2011:	\$2,393.23
Filing Fee:	<u>\$100.00</u>
Subtotal:	\$4,043.23
Less: Security deposit:	(\$775.00)
Pet Deposit:	(\$775.00)
Accrued interest:	<u>(\$0.00)</u>
Balance Owning:	\$2,493.23

Conclusion

The Tenant's application is dismissed without leave to reapply. A Monetary Order in the amount of **\$2,493.23** has been issued to the Landlord 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: February 17, 2011.

Residential Tenancy Branch