



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 hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on a 10 day Notice to End Tenancy for unpaid rent, a request for a monetary order for unpaid rent and utilities in the amount of \$25,000.00 and to recover the filing fee for the Application.

An Agent for the Landlord appeared, gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Tenant appeared at the hearing but would not participate in the hearing.

At the outset, the Tenant queried the need to provide affirmed testimony and stated she had sought information about the hearing process but was not satisfied with the information she received. She queried whether or not this process had the same authority as a court.

The Tenant acknowledged receipt of the Landlord's hearing package, which included the Application of the Landlord, the Notice of Hearing, and information on evidence and preparing for the hearing. Despite this, the Tenant disputed the validity of the hearing process and stated it was not a "court".

It was explained to the Tenant that this was a formal legal hearing, conducted under the authority of the Residential Tenancy Act.

Despite several explanations to the Tenant of the process, she simply made vague statements regarding her concerns about privacy matters or her lack of information about, or her understanding of, the hearing. It was explained to the Tenant several times that it was her choice whether or not to participate in the hearing.

The Tenant stated she had made some sort of arrangement with the Landlord regarding the amounts claimed and the end of the tenancy. It was explained to her that a settlement agreement could also be recorded, however, the Tenant was unwilling to discuss the terms of the settlement.

After 15 minutes of explaining the process, responding to the Tenant's questions and asking if the Tenant was going to participate in the hearing, I determined that the Tenant was unwilling to participate in the hearing. Her telephone line was muted in order that she could listen to the proceedings, and the hearing proceeded.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the testimony of the Agent for the Landlord, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on February 21, 2011, for \$2,950.00 in unpaid rent for February 2011, and for \$11,324.00 in unpaid utilities.

The Notice informed the Tenant that the Notice would be cancelled if the rent and utilities were paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

There is no evidence before me that the Tenant paid the outstanding rent or utilities, or that she filed an Application to dispute the Notice.

The Landlord also issued the Tenant a two month Notice to End Tenancy for the Landlord's use of the rental unit. The two month Notice was issued on December 6, 2010, with an effective date of April 1, 2011. This Notice explains the Tenant had 15 days to dispute the Notice.

There is no evidence before me that the Tenant disputed the two month Notice by filing an Application.

In evidence, the Landlord supplied copies of the two Notices, a letter he sent the Tenant and a statement of accounts for rent and utilities due, in the amount of \$34,174.11. The Landlord had claimed for \$25,000.00 on the Application.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding February 2011 rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

The Agent for the Landlord requested that the order of possession be effective on April 1, 2011, and I grant that request. I find that the Landlord is entitled to an order of possession effective **at 1:00 p.m. on April 1, 2011**. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of **\$3,000.00** comprised of \$2,950.00 in unpaid rent for February of 2011, and \$50.00 towards the filing fee paid by the Landlord for this application. I grant the Landlord an order under section 67 for the balance due.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I find the Landlord provided insufficient evidence to prove the Tenant owed utilities or other rents. The Landlord did not provide copies of the utility bills, or a tenancy agreement or other documents, indicating the Tenant was required to pay such utility bills. There was also no formal accounting of what rents had been paid or when, and the Agent for the Landlord testified there was no receipts provided for cash payments by the Tenant. Therefore, I dismiss the Landlord's other monetary claims with leave to reapply.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy.

The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession on the date requested by the Agent and is granted a monetary order for the February rent due on the Notice to End Tenancy.

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: March 14, 2011.

Residential Tenancy Branch