



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of an apartment in a multi unit complex. Pursuant to a written agreement, the month to month tenancy started on April 19th, 2009. The monthly rent of \$1170.20 was payable on the first of each month and the tenants paid a security deposit in the amount of \$550.00.

The landlord's agent testified that since the filing of this application, the tenant's rent arrears are \$.40 for March and \$1170.20 for April 2011 for the sum of \$1170.60. In her documentary evidence, the landlord's agent provided a copy of the 10 Day Notice to End Tenancy served on the tenants on March 2nd, 2011 by posting the notice on the tenants' door.

The tenant did not dispute the agent's testimony and testified that she paid March rent on the 15th. The tenant said that she cannot afford the rent and that she is trying to find alternate living accommodations. She said that she planned of being caught up with her rent by June 1st, 2011.

The agent stated that the tenant pays rent significantly late and that the landlord is seeking an order of possession.

Analysis

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a Notice to End Tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Under Section 90 of the Act, the notice is deemed to be received on the 3rd day after it was posted on the door or in this case, March 5th, 2011. The tenant has not filed an application for dispute resolution; although she paid rent for March 2011, payment was made 5 days beyond the allowed date specified by statute.

Based on the available evidence, the landlord is entitled to an order of possession and a monetary order for unpaid rent.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Since she was successful, the landlord is entitled to recover the \$50.00 filing fee for a claim totalling \$1220.20. I authorize the landlord to keep the tenants' \$550.00 security deposit and pursuant to Section 67 of the Act, I grant the landlord a monetary order for the balance of \$\$670.20. This Order may be registered in the Small Claims Court 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: April 11, 2011.

Residential Tenancy Branch