



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, OPR, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent / loss of revenue - Section 67;
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by leaving a copy at the tenant’s residence with an adult who apparently resides with the Tenant in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing.

The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

The application named two persons as Tenants, of which only the first named person is on the lease agreement as a Tenant. The Landlord stated at the Hearing that the second named person is living with the Tenant but was not added to the lease agreement. As this second named person has no rights or obligations under the Act, regulation or tenancy agreement, he cannot be considered as a party to the dispute, and I dismiss the application in relation to the second named Tenant.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on July 1, 2010. Rent in the amount of \$1,145.52 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$555.00. The Tenant failed to pay rent for the month of March 2011 and on March 2, 2011 the Landlord personally served the Tenant with a notice to end tenancy for non-payment of rent. The Landlord subsequently received \$150.00 towards the March 2011 rent. Information on the file indicates that the Tenant has not filed an Application for Dispute Resolution. The Landlord does not know whether the Tenant remained in of the unit beyond the effective date of the Notice, March 16, 2011. The quantum of the Landlord's monetary claim is **\$1,145.52**.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's testimony I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has not paid the outstanding rent and has not applied for Dispute Resolution to dispute the notice. The Tenant is therefore conclusively presumed to have accepted that the

tenancy ended on the effective date of the notice. Given the above facts, I find that the Landlord is entitled to an **Order of Possession**.

Section 44 of the Act sets out when a tenancy will end. Where a Landlord has elected to end a tenancy because of non-payment of rent, a tenant is not liable to pay rent after the tenancy agreement has ended pursuant to section 44. If however, the tenant remains in possession of the premises, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. The Landlord in this case has elected to end the tenancy agreement for non-payment of rent by serving a 10 day notice to end tenancy with a move-out date of March 16, 2011. As such, the Tenant is liable for rent to that date or until the Landlord regains possession. Since the Landlord does not know whether the Tenant remained in the premises beyond the move-out date, I find that the Tenant is liable for an amount of rent to March 16, 2011. The per diem rate for the rent is 36.95 ($36.95 \times 31 = 1145.52$). Taking into consideration the \$150 paid toward the March rent, I find the Landlord has established and is eligible for the amount of **\$491.20** ($\$36.95 \times 16 - \$100 = 491.20$) in unpaid rent.

The Landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$541.20**. The **security deposit** will be off-set from the entitlement calculated as follows:

Rental Arrears	\$491.20
Filing Fees for the cost of this application	50.00
Less Security Deposit and interest <i>to date</i>	-555.00
Total Security Deposit Remaining	\$13.80

I order the Landlord to return the remainder of the security deposit forthwith to the Tenants.

Should the Landlord determine that the Tenants have stayed in the possession of the rental unit beyond March 16, 2011, I give the Landlord leave to reapply for additional rental arrears up to the date of possession.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I order that the Landlord retain \$541.20 from the **deposit** and interest of \$555.00 in satisfaction of the claim and I order the remaining amount of \$13.80 be returned forthwith to the Tenant.

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 06, 2011.

Residential Tenancy Branch