



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 was convened by way of conference call to deal with the landlord's application for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord attended the conference call hearing, gave affirmed testimony, and provided evidence in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on March 18, 2011, the tenant did not attend.

All testimony and evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The landlord's agent testified that this tenancy began as a fixed term tenancy on January 15, 1999 which expired on January 31, 2000 and then reverted to a month-to-month tenancy. Rent in the amount of \$1,700.00 per month is payable in advance on the 1st day of each month. On April 1, 1999 the landlord collected a security deposit from the tenant in the amount of \$850.00.

The landlord's agent further testified that the tenant had been a long-term tenant and had often been late with the rent, but paid the arrears from time-to-time bringing the account up-to-date, however the last payment the landlord has received from the tenant was on December 13, 2010.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting the notice to the door of the rental unit on February 3, 2011. A copy of the notice was provided in advance of the hearing, and it states that the tenant failed to pay rent in the amount of \$5,950.00 that was due on February 1, 2011; the notice is dated February 3, 2011 and contains an expected date of vacancy of February 14, 2011. The landlord also provided a copy of the Tenancy Agreement and the tenant ledger showing the arrears now amount to \$9,370.00 including late payment fees which is provided for in the Tenancy Agreement. The tenant has not made any rent payments since service of the notice to end tenancy.

Analysis

The *Residential Tenancy Act* states that a landlord may serve a tenant with a notice to end the tenancy for unpaid rent on any day after rent is due. The tenant then has 5 days to pay the rent in full or apply for dispute resolution to dispute the notice. If the tenant fails to do either, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

In this case, I find that the tenant is deemed to have been served 3 days after the notice was posted to the door of the rental unit, and therefore ought to have an effective date of February 16, 2011. The *Act* also states that if a landlord or tenant gives notice to end a tenancy effective on an incorrect date, the notice is deemed to be changed to the date that complies with the *Act*, and in this case, I find that the notice is automatically changed to show an effective date of February 16, 2011.

I further find that the tenant has not paid the rent in full and has not applied for dispute resolution to dispute the notice, and therefore is conclusively presumed to have accepted that the tenancy ended on February 16, 2011. Therefore, the landlord is entitled to an Order of Possession.

I also find that the landlord has established a monetary claim in the amount of \$9,370.00 in unpaid rent. The landlord has not applied to retain the security deposit in partial satisfaction of the claim, however, pursuant to Section 72 (2)(b), the unpaid rent may be deducted from the security deposit currently held in trust by the landlord. I further find that the tenant is entitled to the benefit of interest payable on the security deposit from April 1, 1999 to today in the sum of \$90.35.

The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant. The tenant must be served with the Order of Possession. If the tenant is served with the Order of Possession and fails 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 also grant a monetary order in the amount of \$8,479.65 in favour of the landlord. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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 06, 2011.

Residential Tenancy Branch