



Dispute Resolution Services

Page: 1

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.

The landlord company was represented by an agent, and the agent and tenant attended the conference call hearing, provided affirmed testimony and were given the opportunity to cross examine each other on their evidence. The landlord also provided evidence packages, the latest of which was received after the time permitted by the Residential Tenancy Rules of Procedure. That evidence has not been considered, however all other evidence and the testimony of the parties 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

This month-to-month tenancy began on October 2, 2009 and the tenant still resides in the rental unit. Rent in the amount of \$795.00 per month is payable in advance on the 1st day of each month. On September 30, 2009 the landlord collected a security deposit from the tenant in the amount of \$397.50.

The landlord testified that the tenant failed to pay rent in full for the month of February, 2011. The tenant further failed to pay rent at all when it was due for the month of March, 2011. On March 4, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing. The notice is dated March 4, 2011, contains an expected date of vacancy

of March 13, 2011, and states that the tenant failed to pay rent in the amount of \$795.00 that was due on the 1st day of March, 2011. Only one page of the 2-page form has been provided as evidence.

Since the notice was issued, the tenant paid \$400.00 on March 24, 2011, for which the landlord issued a receipt marked "For Use and Occupancy Only." The landlord testified that \$300.00 of that payment was for the arrears for February, 2011 and the other \$100.00 was applied to the rent for March, 2011, leaving a balance of March's rent outstanding in the amount of \$695.00. Rent for April, 2011 is also outstanding, for a total of \$1,490.00 owing. He stated that the tenant is consistently late paying the rent, and the manager has been working with him. He stated that the manager has asked the tenant a few times for the rent, but the tenant has not provided any indication of when he can pay.

The tenant testified that he has spoken to the manager, and he has been served with 10 Day Notices to End Tenancy for Unpaid Rent or Utilities which were not enforced, or he managed to pay the rent within the time required on the notices, and therefore did not believe the landlord intended to enforce the notice. He further testified that he has told her that he has an income tax refund coming to him, and has just learned about SAFER housing, whereby he feels he would qualify for some assistance for his housing costs. He stated that he is committed to getting caught up, but is presently unemployed.

The tenant agrees that he was served with 2 pages of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Analysis

The *Residential Tenancy Act* states that if a tenant does not pay rent when it is due, the landlord may serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on any day after the day rent is payable. The tenant then has 5 days to pay the rent in full, in which case the notice has no effect; or the tenant may apply for dispute resolution to dispute the notice within that 5 day period. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, being 10 days after the date the tenant is deemed served with the notice.

In this case, I find that the notice was served personally on March 4, 2011 and the tenant then had until March 9, 2011 to pay the rent in full or dispute the notice. The tenant has not paid the outstanding rent in full and has not disputed the notice. The notice contains an incorrect date of expected vacancy, in that only 9 days have been provided. The *Act* also states that incorrect effective dates in a notice to end a tenancy

are automatically changed to the earliest date that does comply with the *Act*, and I find that the effective date of the notice is March 14, 2011.

With respect to the tenant's evidence that he has been served before on a number of occasions, and the landlord did not enforce it, or the tenant paid within the 5 days, is of little consequence to the landlord's claim before me, in that the *Act* specifies what the tenant's responsibility is and what the landlord's rights are for unpaid rent.

The tenant made a partial payment toward the rent after the notice was served, and the landlord testified that he issued a receipt marked, "For Use and Occupancy Only." That evidence was not disputed by the tenant, and I find that the landlord has not reinstated the tenancy by collecting rent after the issuance of the notice to end the tenancy. Therefore, I find that the landlord is entitled to an Order of Possession.

With respect to the monetary order, I find that the landlord has established a claim for unpaid rent in the amount of \$1,490.00. The landlord is also entitled to recover the \$50.00 filing fee from the tenant 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 landlord serves the notice on the tenant and the tenant 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 further grant a monetary order in favour of the landlord in the amount of \$1,540.00. 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 13, 2011.

Residential Tenancy Branch