



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, (MNR), MNDC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for a loss of rental income and to recover the filing fee for this proceeding. The Landlord said he served the Tenant with the Application and Notice of Hearing (the “hearing package”) by registered mail on March 16, 2011 to the rental unit address as well as to the hospital where the Tenant is currently receiving treatment. The Tenant admitted that she received the Landlord’s hearing package in this matter on or about March 17, 2011.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This month-to-month tenancy started on May 1, 2006. Rent is \$800.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$372.50 at the beginning of the tenancy.

The Landlord said the Tenant did not pay rent for March 2011 when it was due and as a result, on March 2, 2011, the Landlord posted a 10 Day Notice to End Tenancy dated March 2, 2011 on the rental unit door. The Landlord said he also spoke to the Tenant on 16, 2011 by telephone to advise her that he had posted the 10 Day Notice. The Landlord said the Tenant advised him at that time that she had moved out of the rental unit. The Landlord said the Tenant did not give him written notice that she was ending the tenancy, she had not removed any of her personal belongings and she has not paid rent for March or April 2011.

The Tenant said she was upset with a number of matters so on February 2011 she decided to leave the rental unit for good and went to see relatives in another province. The Tenant said she ended up in the hospital where she has been since February 14, 2011. The Tenant said that most of the furnishings in the rental unit belong to the Landlord who lent them to her. The Tenant admitted that she did not give the Landlord written notice she was ending the tenancy because she believed after her telephone

conversation with the Landlord, that the tenancy would end at the end of March 2011 and that the Landlord would remove and store her belongings until she got out of the hospital.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on March 5, 2011. However, I find that the Tenant did not know about the Notice until March 16, 2011 when the Landlord advised the Tenant that he had served her with it. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than March 21, 2011.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect immediately. I also find that the Landlord is entitled to recover rent arrears for March 2011 in the amount of \$800.00.

The Landlord also sought to recover rent for April 2011 which the Tenant disputed. RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy (by serving a tenant with a Notice to End Tenancy) and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Under section 45 of the Act, a Tenant of a month-to-month tenancy must give a landlord one full, calendar month's notice **in writing** that they are ending the tenancy. Consequently, the earliest the Tenant could have ended the tenancy (had she done so in writing on March 16, 2011 after she was notified about the 10 Day Notice) would have been April 30, 2011. As a result, I find that the Landlord is entitled to recover loss of rental income for April, 2011.

However, s. 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. Consequently, I find that the Landlord is entitled to recover a loss of rental income for April 1 – 15, 2011 in the amount of \$400.00 and may reapply for compensation for a loss of rental income for April 16 – 30, 2011 if he is unable to re-rent the rental unit for that period of time.

As the Landlord has been successful in this matter, I also find pursuant to s. 72 of the Act that he is entitled to recover from the Tenant the \$50.00 filing fee for this proceeding.

Conclusion

An Order of Possession to take effect immediately and a Monetary Order in the amount of **\$1,250.00** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 04, 2011.

Residential Tenancy Branch