



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

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?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on July 1, 2002. Rent is \$1,375.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$547.50 on June 19, 2002. The Landlord's agent said the Tenant did not pay rent for February 2011 when it was due and as a result on February 3, 2011 she posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 3, 2011 on the rental unit door.

The Parties agree that the Tenant made a partial payment of \$500.00 on February 28, 2011 for which he was given a receipt stating that the payment was accepted "for use and occupancy only and did not reinstate the tenancy." The Parties also agree that the Tenant has not paid rent for March or April 2011.

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 February 6, 2011. Consequently, the Tenant

would have had to pay the rent arrears in full indicated on the Notice or apply to dispute that amount no later than February 11, 2011.

I find that the Tenant has not paid the overdue rent in full 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 2 days after service of it on the Tenant. I also find that the Landlord is entitled to recover rent arrears for February 2011 in the amount of \$875.00, for March 2011 in the amount of \$1,375.00, for April 1 – 6, 2011 in the pro-rated amount of \$275.00 as well as to a loss of rental income for April 7-15, 2011 in the pro-rated amount of \$366.67. I further find pursuant to s. 72(1) of the Act that the Landlord is entitled to recover from the Tenant, the \$50.00 filing fee for this proceeding.

I order the Landlord pursuant to s. 38(4) and s. 72(2) of the Act to keep the Tenant's security deposit plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears – February 2011:	\$875.00
Rent arrears – March 2011:	\$1,375.00
Rent arrears – Apr. 1-6, 2011:	\$275.00
Loss of rent – Apr. 7 – 15, 2011:	\$366.67
Filing fee:	<u>\$50.00</u>
Subtotal:	\$2,941.67
Less: Security Deposit:	(\$547.50)
Accrued Interest:	<u>(\$19.39)</u>
Balance Owing:	\$2,374.78

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$2,374.78** 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 06, 2011.

Residential Tenancy Branch