



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, 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, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord's agent said he served the Tenant with the Application and Notice of Hearing (the "hearing package") on March 24, 2011 by registered mail to the rental unit address. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

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 fixed term tenancy started on June 15, 2010 and expires on April 30, 2011. Rent is \$450.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$225.00 at the beginning of the tenancy.

The Landlord's agent said the Tenant told him he would pay his rent for February 2011 on February 15, 2011. The Landlord's agent said the Tenant did not pay his rent on that day and as a result, on February 28, 2011, the Landlord's agent posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 28, 2011 on the rental unit door. The Landlord's agent said the Tenant also did not pay rent for March 2011 when it was due and as a result, on March 15, 2011 he posted another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 15, 2011 on the rental unit door. The Landlord said the Tenant has not paid rent for February, 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 10 Day Notice to End Tenancy dated February 28, 2011 three days after it was posted, or on March 3, 2011. Consequently, the Tenant would have had to pay the rent arrears stated on the Notice or apply to dispute that amount no later than March 8, 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 2 days after service of it on the Tenant. I also find that the Landlord is entitled to recover rent arrears of \$450.00 for each of February and March 2011. I further find that the Landlord is entitled to recover unpaid rent for the period, April 1 – 13, 2011 in the pro-rated amount of \$195.00 and a loss of rental income for the period, April 14 – 30, 2011 in the pro-rated amount of \$255.00. As the Landlord has been successful in this matter, he is also entitled pursuant to s. 72(1) of the Act 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 of the Act to keep the Tenant's security deposit of \$225.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$1,175.00.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,175.00** 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 13, 2011.

Residential Tenancy Branch