



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; and to keep the security deposit.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the tenancy started on June 15th, 2008. The rent current is \$686.23 per month and the tenant paid a security deposit of \$325.00.

The landlord testified that the tenant was late paying rent for May 2011 and subsequently issued the tenant a 10 Day Notice to End Tenancy on May 2nd, 2011.

He stated that the tenant did attempt to pay the rent, but that it was not within the 5 days allowed by the notice.

The tenant testified that she e-mailed the resident manager within 5 days of receiving the notice that she would pay the rent by May 13th, 2011, and that since she did not receive a response, she assumed that it was agreed by the landlord. She stated that on May 13th, 2011 the resident manager did not accept the rent and told her that the landlord sought to evict her.

Analysis

The landlord's documentary evidence included proof of service that the 10 Day Notice to End Tenancy was served on the tenant by posting the notice on the tenant's door on May 2nd, 2011. Section 90 of the Act provides in part that when a notice is served by attaching it to the door, service is deemed to be received on the third day after it is attached.

S 53(2) of the Act states that if the effective date in the notice to end tenancy is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. Accordingly the effective date of service of the notice in this matter is changed to May 5th, 2011 and the tenant had until May 10th, 2011 to either pay the rent or file for dispute resolution.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution and did not pay rent within the allowed time frame.

For the reasons stated above the landlord is entitled to an order of possession and a monetary order for unpaid rent.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I authorize the landlord to retain the tenants' \$325.00 security deposit for a balance owing of \$361.23. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$361.23.

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: June 15, 2011.

Residential Tenancy Branch