



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was convened by way of conference call to deal with the landlords' application for an Order of Possession for unpaid rent or utilities and for a monetary order for unpaid rent or utilities.

The male landlord and the tenant both attended the conference call hearing and gave affirmed testimony. All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent or utilities?
Are the landlords entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

This month-to-month tenancy began on March 1, 2010 and the tenant still resides in the rental unit. Rent in the amount of \$600.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$300.00.

The landlord testified that the tenant did not pay rent when it was due on April 1, 2011. The landlord consequently served a 10 Day Notice for Unpaid Rent or Utilities on the tenant by posting it to the door of the rental unit on April 5, 2011. The landlord did not provide a copy of the notice in advance of the hearing, and was unable to answer questions about what was contained in the notice.

The tenant testified that he received 1 page of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. He stated that he lost his job in January, 2011 and has been

unable to pay the rent. The tenant agrees that he owes the landlord \$1,200.00 for rental arrears for the months of April and May, 2011.

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. The tenant then has 5 days to pay the rent in full or apply for dispute resolution to dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

In this case, the landlord has not provided any evidence with respect to the notice except for service of the notice on the tenant. I have no evidence before me that the notice is in the correct form or that the information contained in the notice is accurate. It is very difficult to rule on the validity of documents if they are not provided to the Dispute Resolution Officer prior to the commencement of the hearing. Further, the tenant has testified that only one page of the notice was served upon him, and the landlord did not dispute that evidence. In order to be successful for an Order of Possession, the *Act* requires the landlord to serve both pages of the notice, even though the landlord is not required to fill out any portion of the second page. Therefore, the landlord's application for an Order of Possession cannot succeed. The tenant has not disputed the notice, and the tenant has not disputed that he owes the rent, and the landlord is therefore at liberty to serve the tenant with a new 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and reapply for an Order of Possession.

With respect to the landlord's application for a monetary order for unpaid rent or utilities, the tenant agrees that the landlord is owed \$1,200.00 in unpaid rent, and therefore, I find that the landlord is entitled to a monetary order. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

In the event that the landlord applies again for an Order of Possession, the landlord must take care to ensure that another monetary order for unpaid rent for the months of April and May, 2011 is not applied for, and that the landlord provide a copy of this Decision to the Dispute Resolution Officer who hears that application.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed.

I hereby grant a monetary order in favour of the landlord in the amount of \$1,250.00. 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: May 11, 2011.

Residential Tenancy Branch