



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of this application.

The landlord and the tenant both attended the conference call hearing, provided affirmed testimony, and were given the opportunity to cross examine each other on their evidence. All evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

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

Background and Evidence

The landlord testified that this month-to-month tenancy began on September 1, 2003, and the tenant still resides in the rental unit. Rent in the amount of \$595.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$275.00 and no pet damage deposit was collected.

The landlord further testified that the tenant had been in arrears of rent, and her mother paid the arrears to the landlord, which left a credit of \$115.00 which was applied to the rent owed for the month of March, 2011. The tenant did not pay the balance of the rent for that month, and \$480.00 remains outstanding. The tenant further failed to pay rent for the months of April, May and June, 2011. The landlord served the tenant on April 5, 2011 personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. He testified that the notice was dated April 5, 2011 and contained an expected date of vacancy of April 15, 2011 for unpaid rent in the amount of \$1,670.00 that was due on April 1, 2011. When questioned about the amount contained in the notice, the landlord

stated that it was an error, and the true amount due to the landlord as of April 5, 2011 was \$1,075.00.

The landlord claims an Order of Possession and a monetary order for \$2,265.00 for unpaid rent from March to June, 2011 inclusive, as well as recovery of the \$50.00 filing fee for the cost of this application.

The tenant testified that she is looking for work, but is currently unemployed and does not have the means to pay the entire arrears. She stated that she does not dispute any of the landlord's evidence, but will pay the rent. The tenant has been residing in the rental unit for almost 8 years.

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. Once served, the tenant has 5 days to pay the rent in full, in which case the notice has no effect, or dispute the notice within 5 days of receipt. 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, I find that although an error in the amount of rental arrears appears on the notice to end the tenancy, the tenant has not paid the rent in full or applied for dispute resolution to dispute the notice. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, which is April 15, 2011 and the landlord is entitled to an Order of Possession.

I further find that the landlord has established a claim for \$2,265.00 in unpaid rent from March, 2011 to June, 2011. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

The landlord has not applied for an order permitting the landlord to keep all or part of the security deposit in partial satisfaction of the claim, however, pursuant to Section 73 of the *Residential Tenancy Act*, which states that where a tenant is ordered to pay money to a landlord, the amount may be set off from any security deposit and interest held in trust by the landlord, and I find it just in the circumstances to make that order.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant. The tenant must be served with the Order of Possession. If the tenant is served with the order and fails to comply with the order, the order may be filed in the Supreme Court of British Columbia, and enforced as an order of that Court.

I further order the landlord to keep the security deposit of \$275.00 and interest in the amount of \$9.75, and I grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$2,030.25. 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: June 15, 2011.

Residential Tenancy Branch