



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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 loss or damage under the Act or tenancy agreement for late fees and NSF charges, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on August 24, 2011. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(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 compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on January 1, 2011 as a 1 year fixed term tenancy and was renewed as a month to month tenancy. Rent is \$950.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$475.00 in July, 2010.

The Landlord said that the Tenants have paid all the unpaid rent, late fees and NSF fees as well as September, 2011 rent; therefore the Landlord is not seeking a monetary order as the Tenants do not owe the Landlord any money at the present time. The Landlord said they gave the Tenants receipts for their payments and indicated on the receipts they are for "use and occupancy" only. The Landlord said she is still applying for an Order of Possession to end this tenancy.

The Tenant said she was unaware that the male Tenant was not paying the rent and when she found out she paid the rent as soon as she could. The Tenant said she paid \$950.00 on August 25, 2011 and \$1000.00 on August 30, 2011. The Tenant continued to say the male Tenant is not living in the unit anymore and she would like to continue the tenancy. The female Tenant said the rent would be paid on time.

The Landlord said she wants to end this tenancy with the two Tenants, but she would talk to the female Tenant about starting a new tenancy on October 1, 2011. The Landlord asked for an Order of Possession as soon as possible to end the present tenancy.

Both the Landlord and the Tenant agreed to discuss starting a new tenancy on October 1, 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 pay the overdue rent or apply for dispute resolution. If the 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 ends 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 is posted on the Tenants' door, or on August 5, 2011. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 10, 2011.

I find that the Tenants have not paid the overdue rent in the time required and have 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 48 hours after service of it on the Tenants.

I also find that the Landlord withdrew her request for a monetary order as the unpaid rent, late fees and NSF fee were paid by the Tenant. As the Landlord has been successful in this matter, she is entitled to recover from the Tenants 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 \$50.00 of the Tenants' security deposit as full payment of the filing fee for this proceeding.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia.

I order the Landlord to retain \$50.00 of the Tenants security deposit to pay for the filing fee for this proceeding.

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*.

Residential Tenancy Branch