



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on September 12, 2011. According to the Canada Post online tracking system, the Tenant received the hearing package on September 16, 2011. 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?

Background and Evidence

This tenancy started on August 22, 2008 when the Tenant was added as a party to a tenancy agreement with her spouse. The Landlord said the Tenant subsequently split up with her spouse and on January 23, 2009, she entered into a new tenancy agreement (using her married surname) commencing February 1, 2009. The Landlord said the Tenant subsequently changed her surname to her maiden name. Rent is \$795.74 per month payable in advance on the 1st day of each calendar month.

The Landlord said the Tenant had rent arrears for July and August 2011 and did not pay rent for September 2011 when it was due and as a result, on September 2, 2011 the Landlord served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2011. The Landlord said he has received 2 payments on behalf of the Tenant since he served her with the 10 Day Notice; a payment of \$589.98 on September 14, 2011 and a payment of \$555.58 on September 21, 2011. The Landlord said he gave the Tenant receipts for these payments showing they were accepted "for use and occupancy only."

The Landlord said he received a telephone message from the Tenant just prior to the hearing and she claimed to have vacated the rental unit with the exception of a few of her possessions. The Landlord said he is unsure if the Tenant has, in fact, vacated because she has not returned the key(s) to the rental unit and previously told him she would vacate on October 1, 2011 but failed to do so.

Analysis

The Landlord said the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2011 contains an error in that it refers to the wrong unit number in the rental property. The Landlord argued that the Tenant would not have been confused by this error because he served her with the document at the correct rental unit address. Consequently, the Landlord sought to amend the 10 Day Notice.

Section 68 of the Act says that the director may amend a Notice to End Tenancy “if the person receiving the notice knew or should have known the information that was omitted from the notice and in the circumstances, it is reasonable to amend the notice.” In the absence of any evidence from the Tenant to the contrary, I find that she knew the 10 Day Notice to End Tenancy that she received was for the rental unit she occupied. I am further persuaded that this is the case given the Tenant has advised the Landlord in response to that Notice of her intention to move out. Consequently, the 10 Day Notice to End Tenancy dated September 2, 2011 is amended by correcting the rental unit number from “4” to “3.”

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 (if they believe the amount is not owed) 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.

I find that the Tenant was served in person on September 2, 2011 with the 10 Day Notice dated September 2, 2011. Consequently, the Tenant would have had to pay the amount on the Notice in full or apply to dispute that amount no later September 7, 2011. I find that the Tenant has not paid the overdue rent in full 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 July 2011 rent arrears of \$553.42, August 2011 rent arrears of \$795.74, September 2011 rent arrears of \$795.74 and rent arrears for October 1 – 6, 2011 in the pro-rated amount of \$154.01.

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages

to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Under section 45 of the Act, a Tenant of a month-to-month tenancy must give one full, calendar month's notice they are ending the tenancy. Consequently, the earliest the Tenant could have ended the tenancy (had she given written notice on September 2, 2011) would have been October 31, 2011. However, section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

I find it unlikely that the Landlord will be able to re-rent the rental unit before October 15, 2011. Consequently, I find that the Landlord is entitled to a loss of rental income from October 6 – 15, 2011 in the amount of \$231.02. However, the Landlord must also take steps to mitigate his losses by trying to re-rent the rental unit for part of October 2011. If he is unable to do so, he may reapply for a further loss of rental income for that period. As the Landlord has been successful in this matter, he is entitled pursuant to s. 72(1) to recover from the Tenant, the \$50.00 filing fee he paid for this proceeding. Consequently, the Landlord will receive a monetary order for the following amount:

Rent arrears July 2011:	\$553.42
Rent arrears August 2011:	\$795.74
Rent arrears September 2011:	\$795.74
Rent arrears Oct. 1 – 6, 2011:	\$154.01
Loss of Rent Oct. 7-15, 2011:	\$231.02
Filing fee:	<u>\$50.00</u>
Subtotal:	\$2,579.93
Less: September 14, 2011 Payment:	(\$589.98)
September 21, 2011 Payment:	<u>(\$555.58)</u>
Balance Owing:	\$1,434.37

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,434.37** 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: October 06, 2011.

Residential Tenancy Branch