Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNR, OPR, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the hearing, the Tenants confirmed the correct spelling of the one Tenant's last name and with no objection from either Party, the application is amended to show the correct spelling.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on July 29, 2011 with a fixed term expiring on January 29, 2012. Rent in the amount of $1,400.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenants in the amount of $700.00. The Tenants failed to pay full rent for the month of October

and on October 2, 2011 the Landlord personally served the Tenants with a notice to end tenancy for non-payment of rent. The Tenants subsequently failed to pay the full rent for November 2011. The Tenants have not filed an Application for Dispute Resolution and states that because one of the Tenants who was responsible for half the monthly rent moved out on September 12, 2011, only half the rent was paid. The Tenants did not inform the Landlord of any change in tenancy. The Landlord claims $700.00 in rental arrears for October 2011 and $700.00 for rental arrears for November 2011.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's evidence, I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has not filed an application to dispute the notice, has not moved out of the unit and has not paid the outstanding rent. Although one of the Tenants moved out of the unit, no notice was provided to the Landlord and the tenancy was not ended by either Tenant. As such both Tenants are still jointly and severally liable for the full rent payment.

Given these facts, I find that the Landlord is entitled to an **Order of Possession**. I also find that the Landlord has established a monetary claim for **$1,400.00**. The Landlord is entitled to recovery of the $50 filing fee, for a total entitlement of **$1,450.00.** Setting the security deposit plus interest in the amount of $700.00 off the entitlement leaves the amount of **$750.00** payable by the Tenants to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail 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 order that the Landlord retain the **deposit** and interest of $700.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **$750.00**. If necessary, this order may be filed in the Small Claims Court 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: November 07, 2011.

Residential Tenancy Branch