



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, for compensation for a loss of rental income and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Tenant sought an adjournment so that she could file an application for repairs to be heard with the Landlords' application in this matter. I find, however, that the Tenant received the Landlords' hearing package in this matter on November 22, 2011 and therefore had 3 weeks to apply for dispute resolution to bring such a claim but neglected to do so. Consequently, the Tenant's adjournment application was dismissed pursuant to RTB Rule of Procedure 6.4 on the grounds that the Tenant failed to act in a timely manner to apply for dispute resolution.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This tenancy started on April 1, 2009. Prior to that time, the Tenant rented the lower suite in the rental property. Rent is \$1,227.00 per month payable in advance on the 1st day of each month.

On November 4, 2011, the Landlords served the Tenant with (both pages of) a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 4, 2011 by leaving it in her mailbox by the front door of the rental unit. The Parties agree that the Tenant withheld \$327.00 from her rent for November 2011. The Tenant said she asked her father on or about November 19 or 20, 2011 to pay the rent arrears of \$327.00 to the Landlords, however she said the Landlords would not accept the payment. The Landlords denied that the Tenant's father offered to pay them \$327.00 at that time. The Parties agree that on December 10, 2011, the Tenant (and her father) offered to pay the Landlords the rent arrears for November 2011 and December 2011 however the Landlords would not accept the payment.

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 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. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was put in her mail box or on November 7, 2011. Consequently, ***the Tenant would have had to pay the amount on the Notice no later than November 12, 2011 or apply to dispute that amount no later than November 14, 2011*** (given that the 12th fell on a non-business day).

I find that the Tenant did not pay the overdue rent within the 5 days granted under s. 46(4) of the Act and has not applied for dispute resolution. Even if the Tenant offered to pay the rent arrears for November 2011 on November 19, 2011 as she claimed, I find that the payment of the rent arrears at this time was too late to cancel the Notice and therefore the Landlords were under no obligation to accept it. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlords are entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

I also find that the Landlords are entitled to recover rent arrears for November 2011 in the amount of \$327.00, rent arrears for the period, December 1 – 12, 2011, in the pro-rated amount of \$474.97 and a loss of rental income for the period, December 13 – 31, 2011, in the pro-rated amount of \$752.03 as well as the \$50.00 filing fee for this proceeding for a total monetary award of \$1,604.00.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,604.00** have been issued to the Landlords. 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: December 12, 2011.

Residential Tenancy Branch