



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord.

The landlord testified he served the tenant with the notice of hearing documents and Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on January 12, 2012 in accordance with Section 89 and that this service was witnessed by a third party. I accept the tenant was sufficiently served for the purposes of this hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; for landlord's use of property; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 49, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord testified the tenancy began on November 1, 2011 as a month to month tenancy for a monthly rent of \$720.00 due on the last day of each month with a security deposit of \$400.00 paid.

The landlord submitted the following documents into evidence:

- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on December 7, 2011 with an effective vacancy date of February 7, 2012 citing the rental unit will be occupied by the landlord or the landlord's spouse or a

close family member of the landlord or the landlord's spouse. The landlord testified he served this notice to the tenant personally on December 7, 2011; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on January 1, 2012 with an effective vacancy date of January 1, 2012 citing the tenant had failed to pay rent in the amount of \$720.00 that was due on December 31, 2011.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy on a date that must be no earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement.

The section goes on to say that if the tenant who receives such a notice does not file an Application for Dispute Resolution within 15 days of receiving the notice the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

In the case before me I find that since the landlord issued the Notice on December 7, 2011, to be compliant with Section 49, the earliest possible effective date is February 28, 2012. Section 53 of the *Act* if the effective date of a Notice to End tenancy is incorrect it is deemed to be corrected to the earliest possible allowable date. As such, I find the effective date of the notice to be amended to February 28, 2012.

Further, despite the tenant's failure to pay rent for the month of January 2012, and in accordance with Section 51 of the *Act*, the tenant is entitled to compensation in an amount equivalent to one month's rent or \$720.00. As such, I accept the tenant did not have to pay rent for January 2012 and I dismiss the landlord's Application for an order of possession and a monetary order for unpaid rent based on the 10 Day Notice.

However, as I have allowed the tenant to be compensated through the non-payment of rent for the month of January 2012, the tenant should be aware that if she stays in the rental unit for the month of February 2012 she will be responsible for the payment of the rent in full when it is due on January 31, 2012.

Conclusion

I find the landlord is entitled to an order of possession effective **February 28, 2012 after service on the tenant**. This order must be served on the tenant. If the tenant fails to

comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit held in the amount of \$400.00 in satisfaction of this claim.

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: January 27, 2012.

Residential Tenancy Branch