



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords' Application: OPR, MNR, MNSD, FF
Tenant's Application: CNR

Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2012 and to recover the filing fee for this proceeding. The Landlords applied for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

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?
3. Are the Landlords entitled to keep the Tenant's security deposit?

Background and Evidence

This month-to-month tenancy started on May 16, 2011. Rent is \$800.00 payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$400.00 at the beginning of the tenancy. The Tenant had a co-tenant who has already vacated the rental unit.

The Parties agree that on February 2, 2012 the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2012 when it was posted to the rental unit door. The Parties also agree that the rent for February 2012 in the amount of \$800.00 has not been paid.

Analysis

Section 46(4) of the Act states that a tenant who receives a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities must pay the overdue rent within 5 days or if they believe the amount is not owed, they may apply for dispute resolution (also within 5 days) to cancel the Notice.

I find that on February 2, 2012 the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2012. Although the Tenant filed an application for dispute resolution to cancel this Notice within the 5 days granted under s. 46(4) of the Act, I find that there are no grounds for his application given that he admitted that the rent for February 2012 (which was due on February 1, 2012) has not been paid. As a result, the Tenant's application is dismissed and the Landlord is entitled pursuant to s. 55(2)(b) of the Act 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 rent arrears for February 2012 in the amount of \$800.00 as well as the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72(2) of the Act to keep the Tenant's security deposit of \$400.00 in partial payment of the rent arrears. The Landlord will receive a Monetary Order for the balance owing of \$450.00.

Conclusions

The Tenant's application is dismissed. An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$450.00** 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: February 27, 2012.

Residential Tenancy Branch