



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord 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. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started approximately 12 years ago. The Landlords purchased the rental property on December 5, 2005. Rent is \$1,150.00 per month. The Landlord said rent is due in advance on the 1st day of each month. The Tenant said at one time during the tenancy he paid rent on the 15th day of each month to coincide with pay days however he admitted that his arrangement with the current Landlord has been to pay at the beginning of the month. The Landlord said the Tenant has rent arrears as follows:

- Bal. as of December 1, 2011: \$200.00
- Unpaid rent for December 2011: \$1,150.00
- Unpaid rent for January 2012: \$850.00
- Unpaid rent for February 2012: \$1,150.00
- Balance: \$3,350.00

As a result, the Landlord said on February 2, 2012 she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2012 by placing it in his mail box. The Tenant denied receiving a copy of this Notice. The Landlord said the Tenant has not made any rent payments and now has rent arrears for March 2012.

Analysis

Section 46(1) of the Act says that if rent is unpaid on any day after rent is due, a Landlord may end a tenancy by giving a tenant a Notice to End Tenancy for Unpaid Rent. Section 46(2) says the Notice to End Tenancy must comply with s. 52 of the Act. Section 52 of the Act says that in order to be enforceable, a Notice to End Tenancy when given by a Landlord must (among other things) be on an approved form.

I find that the Notice to End Tenancy served on the Tenant is not an approved form. Instead the Notice to End Tenancy used by the Landlord refers to sections of the Act that are no longer in force and is missing 2 pages. Consequently, even if I were to find that the Tenant was served with the 10 Day Notice, I also find that the Notice is not enforceable because it does not comply with s. 52 of the Act. As a further consequence, the Landlord will have to re-serve the Tenant with a new 10 Day Notice.

The Tenant did not dispute that there are rent arrears of \$4,500.00 which includes rent for March 2012. Consequently, I find that the Landlord is entitled to recover that amount as well as the \$50.00 filing fee for this proceeding. I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$575.00 plus accrued interest of \$50.47 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of

Conclusion

The Landlord's application for an Order of Possession is dismissed. A Monetary Order in the amount of **\$3,924.53** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: March 05, 2012.

Residential Tenancy Branch