

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 as well as to recover the filing fee for this proceeding.

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 Tenants' security deposit?

Background and Evidence

This tenancy started in approximately April 2009. Rent is \$1,000.00 per month payable in instalments of \$500.00 on the 1st and 15th day of each month. The Landlord said a security deposit was not paid however the Tenants said they believe a security deposit may have been paid.

The Parties agree that the Tenants made only a partial payment of rent for December 2011 and did not pay rent for January or February 2012. Consequently on February 5, 2012, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 5, 2012. The Tenants made a partial payment of \$800.00 on February 22, 2012 for which the Landlord issued them a receipt stating that it was accepted "for back rent." The Landlord admitted that he did not tell the Tenants that the payment was accepted for use and occupancy only. The Tenant, A.W., claimed that she believed that in accepting the partial payment, the Landlord did not intend to rely on the 10 Day Notice.

Analysis

Section 46(4) of the Act says that a Tenant who receives a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities must within 5 days of receiving the Notice either pay the overdue rent or if the amount is not owed, apply for dispute resolution to cancel the Notice. If the Tenant does not do either of these things, then pursuant to s. 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 by that date.

However, it is a matter of common law that if a Landlord accepts a payment “for rent” after the 5 days granted on the Notice for paying the overdue rent and does not clearly tell the Tenant that the payment does not cancel the Notice, then the Landlord is deemed to have reinstated the tenancy. I find that the Landlord accepted a partial payment of rent on February 22, 2012 but did not make it clear to the Tenants that their payment would not cancel the 10 day Notice. Consequently, I find that the Landlord reinstated the tenancy and for that reason, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 5, 2012 is cancelled.

The Tenant admitted that rent has not been paid for January, February and March 1 – 15, 2012. Consequently, I find that the Landlord is entitled to recover unpaid rent of \$2,500.00 as well as the \$50.00 filing fee he paid for this proceeding.

Conclusion

The Landlord's application for an Order of Possession is dismissed. A Monetary Order in the amount of **\$2,550.00** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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 06, 2012.

Residential Tenancy Branch