

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord's agent said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on February 21, 2012. Section 90 of the Act says a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent and utility arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This month-to-month tenancy started on January 6, 2012. Rent is \$650.00 per month payable in advance on the 1st day of each month. Heat and hot water are included in the rent however the Tenant is responsible for paying for electricity. The Tenant paid a security deposit of \$325.00 at the beginning of the tenancy.

The Landlord's agent said the Tenant was supposed to transfer the hydro account into his name at the beginning of the tenancy but has not done so to date. Consequently, the Landlord sought reimbursement of hydro charges for the period January 6 – January 28, 2012 (the end of the billing period). The Landlord's agent also claimed that the Tenant made a partial payment of \$400.00 on February 1, 2012 and as a result on February 6, 2012 the Landlord's agent served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 6, 2012. The Landlord's agent said the Tenant has not paid the balance of the rent for February 2012 or the utilities for January 2012 and has not paid any rent for March 2012.

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.

I find that the Tenant was served in person on February 6, 2012 with a 10 day Notice to End Tenancy for Unpaid Rent or Utilities. Consequently, the Tenant would have had to pay the amount of the rent arrears stated on the Notice or apply to dispute that amount within 5 days or no later than February 13, 2012 (given that the 11th fell on a non-business day). I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled 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 the following:

Rent arrears for February 2012:	\$250.00
Rent arrears for March 1 – 7, 2012:	\$146.77
Loss of rent for March 8 – 15, 2012:	\$167.74
Unpaid utilities for Jan. 6 – 28, 2012:	<u>\$39.10</u>
Subtotal:	\$603.61

The Landlord may re-apply for a further loss of rent if he is unable to re-rent the rental unit for the balance of March 2012. I also find that the Landlord is entitled pursuant to s. 72(1) of the Act to recover 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 \$325.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$328.61.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$328.61** have been issued to the Landlord. 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: March 07, 2012.

Residential Tenancy Branch