Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and Monetary Order for unpaid rent; as well as the landlord's request to retain the security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord submitted registered mail receipts as evidence that she sent two packages to the tenant: the hearing documents on March 8, 2012 and the evidence on March 16, 2012. At the commencement of the hearing the tenant stated she received only one registered mail package. The tenant acknowledged she received the Notice of Hearing and the landlord's evidence. A search of the registered mail receipts showed that the two registered mail packages were delivered to the tenant. The tenant acknowledged her boyfriend signed for the registered mail. The tenant confirmed that she understood this hearing to be about unpaid rent. Therefore, I found the tenant sufficiently served with notice of this proceeding and I continued to hear this matter.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent for February through April 2012?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

I was provided undisputed evidence that the tenant's monthly rent is $1,320.00 and the tenant paid a security deposit of $400.00. It was also undisputed that the landlord has not received rent for the months of February or March 2012.

The landlord filed her Application for Dispute Resolution on March 8, 2012 seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent for the months of February through April 2012.

The parties participated in a previous dispute resolution hearing on February 27, 2012 (file no. 787151). The tenant submitted that prior to the previous hearing the landlord had refused to accept rent for February 2012. However, the tenant acknowledged receiving two 10 Day Notices to End Tenancy for Unpaid Rent after February 27, 2012. The first 10 Day Notice informing the tenant the rent for February 2012 was outstanding and the section 10 Day Notice informing the tenant that rent for March 2012 was unpaid. The tenant acknowledged that she made no attempt to pay the outstanding rent or dispute the Notices. The tenant stated that she would be moving out of the rental unit March 31, 2012.

The landlord was agreeable to receiving an Order of Possession effective March 31, 2012 at 1:00 p.m.

Documentary evidence provided for this proceeding included copies of: the tenancy agreement; a 10 Day Notice for February's unpaid rent and a 10 Day Notice for March's unpaid rent; Proof of Service of the 10 Day Notices; and, registered mail receipts.

Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Since the tenant did not pay the outstanding rent or dispute the Notices I find the tenancy has ended and the landlord is entitled to regain possession of the rental unit. As the landlord was agreeable to receiving an Order of Possession effective at 1:00 p.m. on March 31, 2012 I provide such to the landlord. The Order of Possession must be served upon the tenant and may be enforced in The Supreme Court of British Columbia as an Order of the court.

I find the landlord entitled to recover unpaid rent for the months of February and March 2012 in the amount of $1,320.00 for each month. Given the date of this hearing I find

the landlord's claim for unpaid rent for April 2012 to be pre-mature and I dismiss that portion of the landlord's monetary claim with leave to reapply.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

February 2012 rent	$ 1,320.00
March 2012 rent	1,320.00
Filing fee	50.00
Less: security deposit	(400.00)
Monetary Order	$ 2,290.00

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective at 1:00 p.m. on March 31, 2012 to serve upon the tenant. The landlord is authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of $2,290.00 to serve upon the tenant and enforce as necessary. The landlord's request for compensation for April 2012 rent is dismissed with leave to reapply.

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 27, 2012.

Residential Tenancy Branch