



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.

The Landlord's agent said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on March 15, 2012. Section 90(a) of the Act says a document delivered by mail is deemed to be received by the recipient five days later even if they refuse to pick up the mail. 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 arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on February 1, 2011, expired on January 31, 2012 and continued on a month-to-month basis thereafter. Rent is \$1,875.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$900.00 at the beginning of the tenancy.

The Landlord's agent said the Tenant did not pay rent for March 2012 when it was due and as a result, on March 5, 2012 he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 5, 2012 by posting it to the rental unit door. The Landlord's agent said the Tenant's roommate made a payment of \$1,825.00 on March 29, 2012 on behalf of the Tenant for which he was issued a receipt for the payment of "rent." The Landlord's agent said rent for April 2012 has not been paid.

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.

However, it is a principle of common law that if a Landlord accepts a payment of rent from a Tenant after the 5 days granted on the 10 Day Notice and does not make it clear to the Tenant that the tenancy will still end, then the Landlord is deemed to have reinstated the tenancy. In this case, I find that in issuing the Tenant a receipt for “rent” rather than for “use and occupancy”, the Landlord reinstated the tenancy and as a result, his application for an Order of Possession is dismissed.

In the absence of any evidence from the Tenant to the contrary, I find that there are rent arrears of \$50.00 for March 2012. The Landlord’s agent also requested a compensation for April 2012 rent, however, his application for dispute resolution did not include a claim for that relief and therefore he will have to reapply for it. I find that the Landlord is entitled pursuant to s. 72 of the Act to recover the \$50.00 filing fee for this proceeding. As the tenancy has not ended, I find that the Landlord’s application to retain all or part of the Tenant’s security deposit is premature and that part of his application is dismissed with leave to reapply.

Conclusion

The Landlord’s application for an Order of Possession is dismissed without leave to reapply. The Landlord’s application to keep the security deposit is dismissed with leave to reapply. A Monetary Order in the amount of **\$100.00** 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: April 04, 2012.

Residential Tenancy Branch