



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlords' agent said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery mail on April 6, 2012. Based on the evidence of the Landlords' agent, I find that the Tenant was served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

Background and Evidence

This tenancy was a renewal agreement which started on April 1, 2011 as a fixed term tenancy with an expiry date of March 31, 2012. Rent is \$1,700.00 per month payable in advance of the 1st day of each month. The Tenant said she paid a security deposit of \$850.00 on March 1, 2010. The Landlord said the Tenant is living in the rental unit and the Landlord requested an Order of Possession if her application is successful.

The Landlord said that the Tenant did not pay \$1,700.00 of rent for March, 2012, when it was due and as a result, on March 23, 2012 she personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated March 23, 2012. The Tenant said they paid \$500.00 at the end of March, 2012 reducing the unpaid rent to \$1,200.00 for March, 2012. As well the Landlord said the Tenant has unpaid rent for April, 2012 of \$1,700.00.

The Tenant said she agrees that the rent is unpaid and they are planning to move out of the rental unit at the end of the month.

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 pay the overdue rent or apply for dispute resolution. If the 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 ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, as the Tenant received the notice in person the Notice is deemed to have been received on March 23, 2012. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than March 28, 2012.

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 48 hours after service of it on the Tenant.

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant did not have the right under the Act to withhold part or all of the rent for March or April, 2012, therefore I find in favour of the Landlord for the unpaid rent of \$1,200.00 for March, 2012 and \$1,700.00 for April, 2012 for a total of unpaid rent in the amount of \$2,900.00.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears: (\$500.00 X 2)	\$2,900.00	
Recover filing fee	\$ 50.00	
Subtotal:		\$2,950.00
Balance Owing		\$ 2,950.00



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Office of Housing and Construction Standards

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$2,950.00 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*.

Residential Tenancy Branch