



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 by registered mail on May 11, 2012. Based on a Canada Post tracking report, I find that the Tenant received the Landlord's hearing package on May 14, 2012. Consequently, 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 June 15, 2006. The Parties' tenancy agreement shows that at the beginning of the tenancy, rent was \$700.00 per month which *did not* include heat or hydro. On a rent increase form that took effect August 1, 2008, it is apparent that the Tenant had been paying an additional \$100.00 per month for heat and hydro. However on a rent increase form that took effect on March 1, 2012, the rent increase calculation appears to have been incorrectly based on the amount of rent with utilities of \$100.00 combined. Consequently, the Landlord claims that rent is \$868.00. Rent is due in advance on the 1st day of each month. The Tenant paid a security deposit of \$350.00 at the beginning of the tenancy.

The Landlord's agent said the Tenant did not pay rent for April 2012 when it was due and as a result, on April 19, 2012, the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 18, 2012 by registered mail. Based on a Canada tracking report provided by the Landlord, I find that the Tenant received the 10 Day Notice on April 23, 2012. The Landlord's agent said the

Tenant has not paid the outstanding rent for April or May 2012 and now has not paid for June 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 received a 10 Day Notice to End Tenancy for Unpaid Rent on April 23, 2012. Consequently, the Tenant had 5 days from that date or no later than April 30, 2012 (given that the 28th fell on a non-business day) to either pay the overdue rent or to file an application for dispute resolution to cancel the Notice. 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 rent arrears, however not in the amount claimed. It is clear from the terms of the Parties' tenancy agreement that utilities are *not included* in the rent. However, I find that the last rent increase that took effect on March 1, 2010 was calculated also on the amount paid for utilities by the Tenant. I also find that the rent increases that took effect on August 1, 2008 and March 1, 2010 were not calculated correctly in they were based on a 4% and 5% increase, respectively when the maximum allowable increase was 3.7% (or \$25.90) for 2008 and 3.2% (or \$23.23) for 2012. Consequently, I find that the Landlord is entitled to recover rent for April 2012 and May 2012 of \$749.13 plus \$100.00 utilities per month for a total of \$1,698.26.

I also find that the Landlord is entitled to recover from the Tenant 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 \$350.00 plus accrued interest of \$11.65 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

| | |
|---------------------------|------------------|
| Rent and utility arrears: | \$1,698.00 |
| Filing fee: | <u>\$50.00</u> |
| Subtotal: | \$1,748.00 |
| Less: Security Deposit: | (\$350.00) |
| Accrued Interest: | <u>(\$11.65)</u> |
| Balance Owing: | \$1,386.35 |

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,386.35** 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: June 04, 2012.

Residential Tenancy Branch

