



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNDS, FF

Introduction

This matter dealt with an application by the Landlord for a Order of Possession and a Monetary Order for unpaid rent and utilities, for compensation 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 said he served the Tenant in person on August 7, 2012 with the Application and Notice of Hearing (the "hearing package"). 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 tenancy started on January 23, 2011 as a one year fixed term tenancy that expired on January 23, 2012 and continued on a month-to-month basis. Under the terms of the written tenancy agreement, rent is \$800.00 which includes all utilities. The Landlord said commencing February 23, 2012, he and the Tenant agreed that rent would be reduced to \$700.00 per month but that the Tenant would be responsible for paying 1/3 of the utilities for the rental property (which are in the name of another tenant). Rent is due in advance on the 23rd day of each month. The Tenant paid a security deposit of \$400.00 at the beginning of the tenancy.

The Landlord said the Tenant did not pay rent when it was due for the period, July 23 – August 22, 2012, and as a result, on July 25, 2012, he served the Tenant in person with a 10 Day Notice to end Tenancy for Unpaid Rent or Utilities. The Landlord said the Tenant has not paid the overdue rent and now rent for the period, August 23 – September 22, 2012 is not paid. The Landlord said he was advised by another tenant of the rental property that the Tenant has not paid her share of the utilities in the approximate amount of \$300.00.

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.

In the absence of any evidence from the Tenant to the contrary, I find that she was served in person on July 25, 2012 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than July 30, 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 2 days after service of it on the Tenant.

I also find that the Landlord is entitled to recover rent arrears in the amount of \$700.00 for the period, July 23 – August 22, 2012, and \$700.00 for the period, August 23, 2012 to September 22, 2012. I find that there is insufficient evidence to determine the amount of utility arrears if any. Furthermore, as the utilities are not in the name of the Landlord, I find that he cannot make a claim for them on behalf of the other tenants in the rental property until such time as he has personally reimbursed the other tenants for those amounts. I find pursuant to s. 72 of the Act 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) and s. 72 of the Act to keep the Tenant's security deposit of \$400.00 in partial payment of the rent arrears. The Landlord will receive a Monetary Order for the balance owing of \$1,050.00.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,050.00** 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*.

Dated: September 05, 2012.

Residential Tenancy Branch