



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, 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 payment of those amounts.

The Landlord's application named two parties as Tenants, namely B.C. and V.C. The Parties tenancy agreement however is signed only by B.C. Given that V.C. is not a signatory to the tenancy agreement, I find that V.C. is not properly named as a Party to these proceedings and the style of cause is amended by removing her.

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 month-to-month tenancy started on December 1, 2003. Rent is \$1,600.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$800.00 at the beginning of the tenancy.

In a previous proceeding heard on July 4, 2012, the Landlord agreed to withdraw her application *on condition* that the Tenant(s) paid the rent arrears by specified dates and also agreed to pay rent for August 2012 on the 1st day of that month. The Landlord was granted an Order of Possession and a Monetary Order for the unpaid rent on July 4, 2012. The Landlord claims that the Tenant(s) did not pay all of the rent arrears on the specified dates so she filed the Order of Possession in the Supreme Court of B.C. on July 31, 2012 and was granted a Writ of Possession. The Landlord said she also hired a Bailiff to enforce the Writ of Possession but later agreed to cancel the enforcement proceedings because the Tenant(s) paid the prior rent arrears and agreed to pay her enforcement expenses.

However, the Landlord said the Tenant then failed to pay the rent owed for August 2012 when it was due and as a result, on August 7, 2012 she served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord said the Tenant paid the rent for August 2012 in full on August 25, 2012 but made only a partial payment of \$1,200.00 for September 2012 rent. The Landlord said that for all of these payments, she issued the Tenant receipts "for use and occupancy only."

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 was served in person on August 7, 2012 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 7, 2012. Consequently, the Tenant would have had to pay the amount of rent shown on the Notice or (if that amount was not owed) apply to dispute that amount ***no later than August 13, 2012*** (given that the 12th fell on a non-business day). I find that the Tenant paid the rent for August in full but not within the 5 days granted under s. 46(4) of the Act. 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 for September 2012 in the amount of \$400.00 as well as the \$50.00 filing fee for this proceeding. I further find that the Landlord is entitled to recover Supreme Court filing fees of \$120.00 and a Bailiff cancellation fee of \$168.00 ("enforcement expenses") pursuant to a verbal agreement between the parties to that effect. ***I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep \$738.00 of the Tenant's security deposit and accrued interest in full satisfaction of the monetary award*** as follows:

September rent arrears:	\$400.00
Filing fee:	\$50.00
Enforcement Expenses:	<u>\$288.00</u>
Subtotal:	\$738.00
Less: Security Deposit:	(\$800.00)
Accrued Interest <i>to date</i> :	<u>(\$28.32)</u>
Balance of Deposit Remaining:	(\$90.32)

I advised the Parties at the hearing that the Writ of Possession granted to the Landlord on or about July 31, 2012 likely remains valid and enforceable so that a new Order of Possession may not be required.

The Landlord agreed at the hearing that she would not enforce the Order of Possession granted in this matter if the Tenant complied with the payment of the monetary award granted in this matter and the payment of October rent by specified dates. Notwithstanding this agreement, I advised the Parties that the Order of Possession granted in this matter is *unconditional*; that is to say, the Landlord is entitled to the Order of Possession on the basis of the 10 Day Notice to End Tenancy dated August 7, 2012 and it is solely in her discretion whether she chooses to enforce it or not.

Conclusion

An Order of Possession to take effect 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme 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 24, 2012.

Residential Tenancy Branch