Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes   OPR, MNR, MNSD, O, FF

Introduction

This hearing was initially scheduled to deal with the landlord's request for an Order of Possession for the end of a fixed term. The landlord subsequently amended the application to request on Order of Possession for unpaid rent and a Monetary Order for unpaid rent, retention of the security deposit and recovery of the filing fee. The tenant did not appear at the hearing.

The landlord testified that the initial Application for Dispute Resolution was served upon the tenant by registered mail and the landlord provided a copy of the registered mail receipt and tracking number as evidence. The landlord affirmed that the amended application was served upon the tenant in person on September 16, 2010. I was satisfied the tenant was served with notification of this hearing and the landlord's claims against the tenant in a manner that complies with section 89 o the Act and I proceeded to hear from the landlord without the tenant present.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

I was provided the following undisputed evidence. The tenancy commenced May 1, 2010 and the tenant paid a $450.00 security deposit. The tenancy agreement provides that the tenant is to pay rent of $1,500.00 on the 1st day of every month for a fixed term ending September 30, 2010. The tenant's rent was subsidized and the tenant was required to pay $569.00 to the landlord per month. The Ministry had been overpaying the tenant's rent and after applying the overpayments the tenant was required to pay only $461.00 on September 1, 2010. The tenant failed to pay any rent for September and on September 7, 2010 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door in the presence of a witness. The Notice indicates that $461.00 was outstanding as of September 1, 2010 and has an effective date of September 17, 2010. The tenant did not pay the outstanding rent or dispute the Notice.

Upon enquiry, the landlord testified that the tenant was seen moving her belongings from the rental unit this past weekend but the keys have yet to be returned. The landlord requested an Order of Possession and a Monetary Order for the unpaid rent.

As evidence for the hearing, the landlord provided a copy of the tenancy agreement, registered mail receipt, 10 Day Notice and Proof of Service of the 10 Day Notice.

Analysis

A tenant must pay rent when due under the terms of the tenancy agreement. Section 47 of the Act provides that where a tenant does not pay rent, the landlord may issue a 10 Day Notice. Where a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent or dispute the Notice. Otherwise, the tenant is conclusively presumed to have accepted the Notice and must vacate the rental unit by the effective date.

Since the Notice was posted on the door it is deemed to be received three days later in accordance with section 90 of the Act. Accordingly, the effective date is automatically changed to read September 20, 2010 pursuant to section 53 of the Act.

I am satisfied the landlord served the tenant with a 10 Day Notice and the tenant did not pay the outstanding rent or dispute the Notice. Accordingly, I find the tenancy ended September 20, 2010. Since the tenant has not returned possession of the unit to the landlord, the landlord is entitled to an Order of Possession. With this decision I provide the landlord with an Order of Possession effective two days after service of the Order of Possession upon the tenant. The Order of Possession may also be enforced in the Supreme Court of British Columbia as an Order of that court.

I am satisfied that the landlord is entitled to recover unpaid rent of $461.00 from the tenant. As the landlord was successful with this application, I also award the filing fee to the landlord. The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the rent owed by the tenant. I provide for the landlord with this decision a Monetary Order in the amount of $1,550.00 calculated as follows:

Unpaid rent	$ 461.00
Filing fee	50.00
Less: security deposit	(450.00)
Monetary Order	$ 61.00

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Since the tenancy has ended for unpaid rent I find it unnecessary to make a decision with respect to the landlord's initial request for an Order of Possession for the end of a fixed term tenancy.

Conclusion

The landlord has been provided an Order of Possession for unpaid rent effective two days after service upon the tenant. The landlord is authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of $61.00 to serve upon the tenant.

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 23, 2010.

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Dispute Resolution Officer