



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 that amount.

The Landlord's agent said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on March 8, 2011. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Landlord, I find that the Tenant was properly 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 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 October 1, 2008. When the Tenant is eligible for a subsidy, her rent is \$242.00 per month which is payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$300.00 at the beginning of the tenancy.

The Landlord said the Tenant had accrued rent arrears of \$278.00 by the end of January 2011 and did not pay rent for February 2011 when it was due. As a result, on February 22, 2011, an agent for the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 22, 2011 by leaving a copy of it with the Tenant's adult sister who apparently was residing with her in the rental unit at that time. The Landlord said the Tenant did not pay rent for February 2011 and a partial payment of \$270.00 for March 2011 rent was made on her behalf on March 14, 2011. The Landlord's agent said the Tenant was given a receipt for that payment indicating that it was accepted "for use and occupancy only."

Analysis

Based on the documentary and oral evidence of the Landlord, I find that the Tenant currently has rent arrears of \$478.00. (Based on the account ledger provided by the Landlord, I find that the Landlord mistakenly included 2 NSF fees of \$7.00 each as rent arrears.)

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 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 with the 10 Day Notice dated February 22, 2011 on February 22, 2011. Consequently, the Tenant would have had to pay the rent arrears stated on the Notice or apply to dispute that amount no later than February 27, 2011. 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 \$478.00 as well as 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 plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

| | |
|-------------------------|-----------------|
| Rent arrears: | \$478.00 |
| Filing fee: | <u>\$50.00</u> |
| Subtotal: | \$528.00 |
| Less: Security Deposit: | (\$300.00) |
| Accrued Interest: | <u>(\$1.13)</u> |
| Balance Owing: | \$226.87 |

Section 7 of the Regulations to the Act says that a Landlord may recover its actual bank charges for a returned cheque. Although the Landlord sought to recover its bank charges for 2 returned cheques, it provided no evidence to support that claim and as a result, I find that there is insufficient evidence to award that amount and that part of the Landlord's claim is dismissed without leave to reapply.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$226.87** 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: March 31, 2011.

Residential Tenancy Branch