



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR

Introduction

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

The Landlord's agents said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by leaving a copy of it on March 11, 2011 with an adult person at the Tenant's residence who apparently resides there with her. The Landlord's agents said the Tenant confirmed to them on March 14, 2011 that she had received the hearing package. Section 89 of the Act says that an application must be served on the Tenant in person or by registered mail. However, given the Landlord's evidence that the Tenant acknowledged to them that she received the hearing package, I find pursuant to s. 71(2)(c) of the Act that she has been sufficiently served for the purposes of the Act. As a result, 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?

Background and Evidence

This fixed term tenancy started on December 1, 2010 and expires on May 31, 2011. Rent is \$1,000.00 per month payable in advance on the 1st day of each month. The Landlord's agents said the Tenant did not pay rent for March 2011 when it was due and as a result, on March 2, 2011, an agent for the Landlord served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2011. The Landlord's agents said the Tenant made payments of \$500.00 each on March 9, 2011 and March 18, 2011 for which she was given receipts stating that the payment did not reinstate the tenancy.

The Landlord's agents agreed that the rent arrears for March 2011 were paid in full, however they also sought to recover a late payment fee of \$25.00 and NSF bank charges of \$25.00 as they claimed that the Tenant's pre-authorized debit payment for February 2011 rent was returned unpaid.

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 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 ends on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenant received the 10 day Notice to End Tenancy dated March 2, 2011 in person on March 2, 2011. Consequently, the Tenant would have had to pay the rent arrears of \$1,000.00 or apply to dispute that amount (if it was not owing) no later than March 7, 2011. I find that the Tenant did not pay the overdue rent by March 7, 2011 and did not apply for dispute resolution to dispute that that amount was owed. 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 at 1:00 p.m. on March 31, 2011.

Section 7 of the Regulations to the Act says that a Landlord may charge a late payment fee of \$25.00 provided that there is a term in the Parties' tenancy agreement to that effect and may also charge a tenant actual bank charges for a returned rent payment. Consequently, I find that the Landlord is entitled to recover \$25.00 for a late payment fee for February 2011 pursuant to a term of the tenancy agreement to that effect. However in the absence of any evidence from the Landlord that it incurred bank expenses of \$25.00 due to the Tenant's unsatisfied pre-authorized debit payment, I find that there is insufficient evidence to support that claim and it is dismissed without leave to reapply. However, the Landlord is entitled pursuant to s. 72 of the Act to recover from the Tenant the \$50.00 filing fee for this proceeding.

Conclusion

An Order of Possession effective March 31, 2011 at 1:00 p.m. and a Monetary Order in the amount of **\$75.00** 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: March 24, 2011.

Residential Tenancy Branch