



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of this application.

The landlord company was represented at the hearing by an agent, and the tenant also attended. The parties gave affirmed testimony, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on February 1, 2002 and the tenant still resides in the rental unit. Rent in the amount of \$905.00 per month is payable in advance on the 1st day of each month. On December 29, 2001 the landlord collected a security deposit from the tenant in the amount of \$397.50.

The landlord's agent testified that the tenant failed to pay rent when it was due for April, 2011. On April 20, 2011 an employee of the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. She stated that the notice is dated April 20, 2011 and contains an expected date of vacancy of April 29, 2011. When questioned about why the 10 Day Notice provides only 9 days as an expected date of vacancy, the agent testified that she erroneously counted the first day, being April 20, 2011. She further stated that the notice states that the tenant failed to pay rent in the amount of \$905.00 that was due on April 1, 2011.

The landlord's agent further testified that she had believed the tenant would pay the rent, and she would not have to act on it, however, the tenant failed to pay rent for the month of May, and the landlord applied for dispute resolution on May 13, 2011 which was served on the tenant by registered mail on May 16, 2011.

The landlord claims an Order of Possession and a monetary order for \$2,765.00, being 3 months of rent (April, May and June, 2011) and \$50.00 for the cost of filing this application. The landlord's agent also requests that an order be made permitting the landlord to retain the security deposit and interest in partial satisfaction of the claim.

The tenant testified that the landlord's evidence is correct. He has not paid the rent and has no money to pay it and is currently unemployed.

Analysis

The *Residential Tenancy Act* states that if a tenant does not pay rent when it is due, the landlord may serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on any day after rent is payable. The tenant has 5 days from the date the tenant is deemed to have been served with the notice to pay the rent in full or apply for dispute resolution disputing the notice to end the tenancy. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which is 10 days from the date the tenant is deemed to be served with the notice.

In this case, I find that the landlord served the tenant with the notice on April 20, 2011 by posting it to the door of the rental unit. The tenant is therefore deemed to have been served 3 days later, or on April 23, 2011. The tenant then had until April 28, 2011 to dispute the notice or pay the rent in full. The tenant did neither, and the landlord's notice contains an incorrect effective date of April 29, 2011; the effective date should read May 3, 2011. However, pursuant to Section 53 of the *Residential Tenancy Act*, I find that the incorrect dates are deemed to be changed to the earliest date that complies with the *Act*.

I further find that the tenant has not paid the rent and has not applied for dispute resolution to dispute the notice and therefore is conclusively presumed to have accepted that the tenancy ended on May 3, 2011. I further find that the landlord is entitled to an Order of Possession.

With respect to the monetary order, the tenant did not dispute that he owes 3 month's rent for April, May and June, 2011 for a total of \$2,715.00, and therefore I find that the

landlord is entitled to a monetary order in that amount. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

With respect to the security deposit, although the landlord has not applied to retain it, Section 72 of the *Residential Tenancy Act* states that where a tenant is ordered to pay a monetary amount to the landlord, the amount may be deducted from any security deposit held in trust. Therefore, I grant the landlord an order to retain the security deposit and interest in partial satisfaction of the claim. I further find that the landlord holds \$397.50 and \$14.16 in interest, for a total of \$411.66.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice. The tenant must be served with the Order of Possession. If the tenant is served with the order and fails to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I further order the landlord to retain the security deposit and interest in the amount of \$411.66 and I grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$2,353.34. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

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: June 07, 2011.

Residential Tenancy Branch