Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPR, MNR

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order of Possession - Section 55; and
2. A Monetary Order for unpaid rent - Section 67.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on January 4, 2011. Rent in the amount of $1,600.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of $800.00. The Tenant failed to pay rent for April, May, June and July 2011 and on July 5, 2011 the Landlord personally served the Tenant with a notice to end tenancy for non-payment of rent. The Tenant has not moved out of the unit and failed to pay the rent for August. The Tenant has not filed an Application for Dispute Resolution and states that the unit will be vacated by August 16, 2011. The Landlord claims rental arrears to August 16, 2011, less an amount of $1,000 paid by the Tenant on June 24, 201, in the remaining amount of $6,200.00.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's evidence I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has not filed an application to dispute the notice and has not paid the outstanding rent   Given these facts, I find that the Landlord is entitled to an **Order of Possession**. I also find that the Landlord has established a monetary claim for **$6,200.00** in unpaid rent to August 16, 201. Should the Landlord not obtain possession of the unit by August 16, 2011, I give the Landlord leave to reapply for additional lost rental income until possession of the unit is obtained.

The **security deposit** will be off-set from the award made herein.

Calculation for Monetary Order

Rental Arrears	$6,200.00
Less Security Deposit and interest *to date*	-800.00
Total Monetary Award	**$5,400.00**

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail 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 order that the Landlord retain the **deposit** and interest of $800.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act

for the balance due of **$5,400.00**. If necessary, this order may be filed in the Small Claims Court 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: August 15, 2011.

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Residential Tenancy Branch