



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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 as well as to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenant's security deposit.

The Landlord served the Tenant with the Application and Notice of Hearing by registered mail on May 27, 2009. According to the Canada Post online tracking system, the Tenant received the hearing package on May 29, 2009. I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in his absence.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on February 1, 1996. Rent is \$740.00 per month 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 was in arrears of rent of \$1,070.00 (not including May 2009 rent) at the beginning of May 2009 and as a result, on May 2, 2009 he posted a 10 Day Notice to End Tenancy for Unpaid Rent dated May 2, 2009 on the Tenant's door. The Landlord said the Tenant made payments totalling \$859.00 in May 2009, however together with May rent, they were not enough to satisfy the arrears. The Landlord said that the Tenant has current arrears of \$1,461.00 (which includes parking of \$15.00 per month, July 2009 rent and 3 late fees of \$25.00 each).

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 amount set out on the Notice 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 must vacate the rental unit at that time. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or in this case, on May 7, 2009.



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Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than May 12, 2009.

I find that the Tenant has not paid the amount indicated on the Notice and has not applied for dispute resolution. Consequently, pursuant to section 46(5), the Tenant is conclusively presumed to have accepted that the tenancy would end on May 12, 2009.

I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant. I also find that the Landlord is entitled to recover rent arrears to June 30, 2009 in the amount of \$706.00, a loss of rental income of \$377.50 to July 15, 2009, \$75.00 in late fees and the \$50.00 filing fee for this proceeding. Pursuant to s. 38(4) of the Act, I order the Landlord 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:	\$706.00
Loss of rent:	\$377.50
Late fees:	\$75.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,208.50
Less: Security Deposit:	(\$300.00)
Accrued Interest:	<u>(\$48.85)</u>
BALANCE OWING:	\$859.65

Conclusion

An Order of Possession effective 48 hours after service of it on the Tenant and a monetary order in the amount of **\$859.65** 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: July 06, 2009.

Dispute Resolution Officer