



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 said she served the Tenant in person on August 12, 2009 with a copy of the Application and Notice of Hearing. Based on the evidence of the Landlord, I find pursuant to s. 89 of the Act that the Tenant was properly served with the Notice of this hearing and the hearing proceeded in his absence.

Issue(s) to be Decided

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

Background and Evidence

This month to month tenancy started on July 1, 2009. Rent is \$770.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$385.00 at the beginning of the tenancy.

The Landlord claims that the Tenant paid \$370.00 for July 2009 rent and as a result, on July 30, 2009, she served him with a 10 Day Notice to End Tenancy for Unpaid Rent. The Landlord also claims that the Tenant has paid rent for August and September 2009.

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. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than August 4, 2009.

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The 10 Day Notice to End Tenancy states that the amount of \$1,170.00 was due on July 30, 2009. However, I find based on the Landlord's oral evidence that only \$400.00 was due on that day as August 2009 rent was not due until August 1, 2009. In any event, I find that the Tenant has not paid the \$400.00 rent arrears for July 2009 and has not applied for dispute resolution to dispute the Notice. Consequently, pursuant to section 46(5), he is conclusively presumed to have accepted that the tenancy would end on August 9, 2009.

As a result, 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 the Order on the Tenant. I also find that the Landlord is entitled to recover rent arrears in the amount of \$1,940.00 as well as the \$50.00 filing fee for this proceeding. Pursuant to s. 38(4), 62(3) and 72 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:	\$1,940.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,990.00
Less: Security Deposit:	(\$385.00)
Accrued Interest:	<u>(\$0.00)</u>
Balance Owing:	\$1,605.00

Conclusion

An Order of Possession effective 48 hours after service of it on the Tenant and a monetary order in the amount of **\$1,605.00** 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: September 25, 2009.

Dispute Resolution Officer