



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 and to recover the filing fee for this proceeding as well as to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he served the Tenant by registered mail at the rental unit address on October 15, 2009 with a copy of the Application and Notice of Hearing. According to the Canada Post online tracking system, a notification card was delivered to the Tenant but he did not pick up the hearing package. I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in the Tenant's 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 the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on July 1, 2009 and expires on June 30, 2010. Rent is \$755.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$337.50 on June 19, 2009.

The Landlord claims that the Tenant did not pay rent in full for October 2009 and as a result, on October 3, 2009 the Landlord posted a 10 Day Notice to End Tenancy dated October 3, 2009 on the Tenant's door. The Landlord said that the Tenant paid \$100.00 on October 22, 2009 and was given a receipt stating the payment was "for use and occupancy only." The Landlord said that the Tenant has not paid any further amount on the rent arrears and is now in arrears of rent for November, 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 overdue rent or apply

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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. 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 on October 6, 2009. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than October 13, 2009 (due to the holidays).

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. 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 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover rent arrears in the amount of \$505.00 for October 2009 and \$755.00 for November 2009 as well as the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act 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:	\$1,260.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,310.00
Less: Security Deposit:	(\$337.50)
Accrued Interest:	<u>(\$0.00)</u>
BALANCE OWING:	\$972.50

Conclusion

An Order of Possession effective 48 hours after service of it on the Tenant and a monetary order in the amount of **\$972.50** 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: November 30, 2009.

Dispute Resolution Officer