Dispute Resolution Services

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

The Landlord said he served the Tenant with a copy of the Application and Notice of Hearing (the "Hearing Package") on June 5, 2010 by registered mail to the rental unit address. Section 90 of the Act says that a document delivered in this way is deemed to be received by the recipient 5 days later even if the recipient refuses to pick up the mail. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Does the Landlord have grounds 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 month to month tenancy started on December 15, 2009. Rent is $575.00 per month. The Tenant paid a security deposit of $287.50 at the beginning of the tenancy.

The Landlord said he served the Tenant with a One Month Notice to End Tenancy for Cause on April 25, 2010 by posting it to the rental unit door. The Landlord also said that the Tenant advised him on July 16, 2010 that she had moved most of her personal possessions out of the rental unit and would be returning the following day to remove the balance of her belongings, clean the rental unit and drop off the key. The Landlord claimed that the Tenant has not yet returned to the rental unit.   The Landlord also claimed that the Tenant has not paid rent for the month of July 2010.

Analysis

Section 47(4) of the Act states that a Tenant must apply to cancel a One Month Notice to End Tenancy for Cause **within 10 days of receiving it** and if they fail to do so then

under s. 47(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 April 28, 2010.

I find that the Tenant has not applied for dispute resolution to cancel the One Month Notice dated April 25, 2010 and as a result pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect immediately.

In the absence of any evidence from the Tenant to the contrary, I also find that the Landlord is entitled to recover rent arrears in the amount of $352.42 for the period July 1 – 19, 2010, a loss of rental income in the amount of $222.58 for the period July 20 – 31, 2010 as well as the $50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

	Rent arrears:	$352.42
	Loss rental income:	$222.58
	Filing fee:	$50.00
	Subtotal:	$625.00
Less:	Security Deposit:	($287.50)
	Balance Owing:	$337.50

Conclusion

An Order of Possession effective immediately and a Monetary Order in the amount of **$337.50** 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: July 19, 2010.

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Dispute Resolution Officer