



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, 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.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on August 19, 2010. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package 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 rent arrears and if so, how much?

Background and Evidence

This tenancy started on April 15, 2010 as a 1 year fixed term tenancy with an expiry date of April 14, 2011. Rent is \$900.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$450.00 on April 13, 2010.

The Landlord said that the Tenant did not pay \$900.00 of rent for June, 2010 when it was due and as a result, on June 19, 2010 he personal delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated June 19, 2010 to the Tenant. The Landlord said the Tenant has unpaid rent of \$900.00 for May, 2010, unpaid rent of \$900.00 for June, 2010, in August the Tenant paid \$1,300.00 for August rent and rent arrears. The landlord continued to say that there is unpaid rent of \$200.00 for September and the Pet deposit of \$450.00 is unpaid. The Landlord said the total unpaid rent is \$1,600.00 and the pet deposit of \$450.00 is unpaid.

The Landlord said that all the receipts that he has issued for payments of rent have had "for use and occupancy" written on them. He said he did this so the Tenant would understand it was his intension to end the tenancy and he wanted to comply with the Residential Tenancy Act.



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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 pay the overdue rent or apply for dispute resolution. If the 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.

As the tenant was served in person it is deemed the Tenant received the Notice to End Tenancy on June 19, 2010. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than June 24, 2010.

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(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 unpaid rent for May, 2010, in the amount of \$900.00, unpaid rent for June, 2010 in the amount of \$900.00, unpaid rent for September of \$200.00, less the \$400.00 overpayment of rent in August, 2010. The total unpaid rent is \$1,600.00.

The Landlord said he inadvertently missed the check off the request to keep the Tenants security deposit as partial settlement of his claim. I find that the Landlord's request to include the Tenant's security deposit is granted as another application by the landlord for the security deposit would not serve the interests of either the Landlord or the Tenant.

The Landlord has included in his calculations the unpaid pet deposit of \$450.00. The 10 Day Notice to End Tenancy for Unpaid Rent and Utilities does not include unpaid deposits; therefore this part of the claim is dismissed with leave to reapply.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$1,600.00
Recover filing fee	<u>\$ 50.00</u>
Subtotal:	\$1,650.00
Less Security Deposit	<u>\$ 450.00</u>
Balance owing	\$1,200.00



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Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,200.00 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*.
