



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

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on August 17, 2010. 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 rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on July 1, 2008 as a 6 month fixed term tenancy with an expiry date of January 30, 2009 and then renewed as a month to month tenancy. Rent is \$1,225.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$612.50 on July 3, 2008.

The Landlord said that the Tenant did not pay \$1,225.00 of rent for August, 2010 when it was due and as a result, on August 3, 2010 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated August 3, 2010 to the Tenant. The Landlord said the Tenant has made a number of payments to catch up on the rent, but the rent has not been current for either August or September, 2010. The Landlord said that the Tenant has \$50.00 of unpaid rent outstanding as of the End of September and the Landlord said he doesn't know if the October rent is paid or not as it is paid by electronic debt and he doesn't know if it cleared the Tenant's bank account as of the hearing date October 4, 2010.

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The Landlord further indicated that the Tenant is living at the rental unit and the Landlord requested an Order of Possession due to unpaid rent.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

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.

Under s. 90 of the Act, as the tenant was served in person the Tenant is deemed to have received the Notice to End Tenancy on the day it was served, or on August 3, 2010. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 8, 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 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 unpaid rent for September, 2010 in the amount of \$50.00. 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. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act, to keep \$100.00 of the Tenant's security deposit in full payment of the rent arrears and filing fee.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

This decision is made on authority delegated to by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*
