



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF, ERP

Introduction

This matter dealt with cross applications by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for loss or damage under the Act or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenant's security and pet deposit in partial payment of those amounts.

The Tenant's application is for a Cancellation of the Notice to End Tenancy, for Emergency repairs to the unit for health or safety reasons 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 posting it on the Tenant's door on September 21, 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.

As the Tenant did not attend the hearing and as a result did not present any evidence to support his application and claim, the Tenant's application is dismissed without leave to reapply.

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?
5. Is the Tenant entitled to a cancellation of the Notice to End Tenancy?
6. Is the Tenant entitled to compensation for emergency repairs?

Background and Evidence

This tenancy started on November 1, 2009 as a 1 year fixed term tenancy with an expiry date of October 31, 2010. Rent is \$2,300.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,150.00 and a pet deposit of \$1,150.00 on October 30, 2009.

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The Landlord said that the Tenant did not pay \$2,300.00 of rent for September, 2010 when it was due and as a result, on September 10, 2010 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated September 10, 2010 on the door of the Tenant's rental unit. The Landlord said the Tenant has unpaid rent for October, 2010 of \$2,300.00.

The Landlord further indicated that the Tenant is living at the rental unit and the tenancy agreement ends October 31, 2010. The Landlord requested an Order of Possession to take effect on October 31, 2010.

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

Analysis

Section 26 of the Act says tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the Tenant has not paid the overdue rent and does not have the right under the Act to deduct all or a portion of the rent. Consequently, I find pursuant to s. 55(2)(a) of the Act that the Landlord is entitled to an Order of Possession. The Order of Possession is to take effect on October 31, 2010 after service of it on the Tenant as prescribed by the Act.

I also find that the Landlord is entitled to recover unpaid rent for September, 2010, in the amount of \$2,300.00 and unpaid rent for October, 2010, in the amount of \$2,300.00.

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 the Tenant's security deposit and pet deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:



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	Rent arrears:	\$4,600.00
	Recover filing fee	<u>\$ 50.00</u>
	Subtotal:	\$4,650.00
Less:	Security Deposit	\$1,150.00
	Pet Deposit	<u>\$1,150.00</u>
	Subtotal:	\$2,300.00
	Balance Owing	\$2,350.00

Conclusion

The Tenant's application is dismissed without leave to reapply.

An Order of Possession effective October 31, 2010, and a Monetary Order in the amount of \$2,350.00 has 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: October 25, 2010.

Dispute Resolution Officer