



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 utilities, 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") by registered mail on October 21, 2010. Section 90 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. 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 and utility arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started in approximately August 2007. The Parties signed a tenancy agreement on January 13, 2010 for a one year fixed term commencing January 1, 2010. Rent is \$500.00 per month payable in advance on the 1st day of each month plus utilities which the Landlord claimed were fixed at \$20.00 per month. The Tenant paid a security deposit of \$250.00 at the beginning of the tenancy.

The Landlord said the Tenant did not pay rent and utilities for August and September 2010 and as a result on September 2, 2010, the Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2010 on the rental unit door. The Landlord said the Tenant has not paid the arrears set out on the Notice and has not paid rent and utilities for October and November.



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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 either pay the overdue rent or apply 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 September 5, 2010. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than September 10, 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 2 days after service of it on the Tenant.

I find that the Landlord is entitled to recover rent arrears in the amount of \$1,500.00 for August, September and October 2010 and unpaid utilities for those months in the total amount of \$60.00. I also find that the Landlord is entitled to recover pro-rated rent for the period, November 1 – 4, 2010 in the amount of \$66.67, a loss of rental income for the period, November 5 – 15, 2010 in the pro-rated amount of \$183.33, unpaid utilities for the period November 1 – 15, 2010 in the amount of \$10.00 as well as the \$50.00 filing fee for this proceeding.

In previous proceedings held on July 22, 2010, the Landlord was granted an order for \$50.00 in payment of the filing fee. Section 72 of the Act says that where the director orders a tenant to pay an amount to a landlord, that amount may be deducted from any security deposit due to a tenant. Consequently, I find that the Landlord was entitled to deduct the \$50.00 previously granted from the security deposit and that he currently holds a balance of \$200.00 on behalf of the Tenant. I Order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the balance of 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:	\$1,566.67
Loss of rental income:	\$183.33
Unpaid utilities:	\$70.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,870.00
Less: Security Deposit:	(\$200.00)
Accrued Interest:	<u>(\$5.35)</u>
BALANCE OWING:	\$1,664.65



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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 **\$1,664.65** 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 04, 2010.

Dispute Resolution Officer