



Dispute Resolution Services

Page: 1

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 a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said he was unaware that the security deposit could be used against unpaid rent when he completed the application. As a result he did not check off that he wanted to retain the security deposit as partial payment of the unpaid rent. The Landlord requested that the application be amended to include the security deposit as partial payment of the unpaid rent. The request for amendment was granted.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on November 25, 2010. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Tenant and the Landlord in attendance.

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 September 26, 2010 as a fixed term tenancy with an expiry date of August 31, 2015. Rent is \$2,600.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$1,300.00 in August and September, 2010.

The Landlord said that the Tenants did not pay \$2,600.00 of rent for November, 2010 when it was due and as a result, on November 16, 2010 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated November 16, 2010, on the door of the Tenants' rental unit. The Landlord continued to say the Tenants also have unpaid rent for December 2010 of \$2,600.00.

Residential Tenancy Branch
Ministry of Housing and Social Development

The Landlord also said that he is concerned if the utilities have been paid. He said he understands some of the utilities have been transferred into the Tenant's name, but not all of them. In addition the Landlord said he is concerned that a pet is living in the unit and no arrangements have been made for the pet between the Landlord and the Tenant. The Landlord also asked the Tenant if there were any additional occupants in the rental unit.

The Tenant said that they have just moved to the area and she has had some difficulties with the relocation and some bank issues have come up which have partially resulted in the rent not being paid. The Tenant said she likes the rental unit and would like to work out an agreement with the Landlord to stay in the unit. The Tenant proposed that she would continue with the regular rent payments starting January 1, 2011 and then work out a payment plan for the unpaid rent from November and December, 2010.

The Tenant continued to say that the pet is no longer in the unit and that her father is living with them on a part time basis. As well she said that the utilities are not fully paid and that she was waiting for the outcome of the hearing before she paid them.

The Tenant said she did not have the money to pay the rent at the present time.

The Landlord said he wanted to proceed with his application as amended and he said he is requesting an Order of Possession.

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, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on November 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 November 24, 2010.

Residential Tenancy Branch
Ministry of Housing and Social Development

I find that the Tenants have not paid the overdue rent and have 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 November, 2010, in the amount of \$2,600.00. I further find that the Landlord is entitled to recover a loss of rental income for December, 2010 in the amount of \$2,600.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants 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 Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears: (\$2,600.00 X 2)	\$5,200.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$5,250.00
Less:	Security Deposit	\$ 1,300.00
	Subtotal:	\$1,300.00
	Balance Owing	\$3,950.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$3,950.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: 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*.
