



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This matter dealt with an application 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 and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on February 24, 2011. 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 compensation for damage or loss under the Act, the regulations or the tenancy agreement and if so how much?

Background and Evidence

This tenancy started on April 1, 1994 as a 1 year fixed term tenancy and then renewed as a month to month tenancy. Rent is \$860.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$320.00 on April 1, 1994.

The Landlord said that the Tenant did not pay \$290.00 of rent for February, 2011 when it was due and as a result, on February 11, 2011 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated February 11, 2011 on the door of the Tenant's rental unit. The Landlord also sought from the Tenant unpaid late fees of \$20.00 each for February and March, 2011, unpaid NSF charges of \$25.00 for February, 2011 and the Landlord requested to recover the \$50.00 filing fee for this proceeding.

The Landlord said the Tenant did pay the March, 2011 rent on March 1, 2011 and she said the Tenant had a \$12.00 credit on her account therefore the Landlord is seeking a monetary Order for \$393.00.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord requested an Order of Possession as soon as possible if she is successful with her application.

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 February 11, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than February 16, 2011.

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 February, 2011, in the amount of \$290.00. I further find that the Landlord is entitled to recover the late charge of \$20.00 and the NSF charge of \$25.00 for February, 2011, but I dismiss the late charge for March, 2011 as the rent was paid on March 1, 2011.

As the Landlord has been successful in this matter, she 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:	\$290.00	
	Late payment fee(1)	\$ 20.00	
	NSF fee(1)	\$ 25.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$385.00
Less:	Tenant's credit	\$ 12.00	
	Subtotal:		\$ 12.00
	Balance Owing		\$373.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$373.00 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*.

Residential Tenancy Branch