



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, 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, 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 the Application and Notice of Hearing (the "hearing package") by registered mail on May 16, 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. Are there damages or loss under the Act, regulation or tenancy agreement?
5. Is the Landlord entitled to compensation for damage or loss and if so how much?
6. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

The Landlord said he could not remember the month, but this tenancy started in 2002 as a one year fixed term tenancy and then renewed as a month to month tenancy. Rent is \$416.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$400.00 in 2002. The Landlord said it is his understanding that the Tenant has moved out of the rental unit, but he is still requesting an Order of Possession. The Landlord said he doesn't know what day the Tenant moved out and the Tenant did not give him any notice or a forwarding address.

The Landlord said that the Tenant did not pay \$416.00 of rent for January, 2011, \$316.00 of rent for February, 2011, \$416.00 of rent for March, 2011, \$416.00 of rent for April, 2011 and \$416.00 of rent for May, 2011 when it was due and as a result, on May 2, 2011, he registered mailed a 10 day Notice to End Tenancy for Unpaid Rent or

Utilities dated May 2, 2011 to the Tenant. The Landlord said the Tenant has unpaid rent for June, 2011 of \$416.00 as well.

The Landlord said he is seeking to recover the \$50.00 filing fee for this proceeding.

The Landlord continued to say the rental unit is in a terrible state as he believes the Tenant was a hoarder and has left the unit unclean and with a lot of garbage on the grounds and in the house. As a result he is requesting the June, 2011 rent in the amount of \$416.00 as lost rent because he will not be able to rent the unit out for some time.

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 5 days after it is sent by registered mail, or on May 7, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than May 12, 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 June 10, 2011.

I also find that the Landlord is entitled to recover unpaid rent for January, 2011 February, 2011 March, 2011 April, 2011 and May, 2011 in the amount of \$1,980.00. I further find that the Landlord is entitled to recover lost rent for June, 2011, in the amount of \$416.00 as it is unknown when the Tenant moved out, no notice was given to the Landlord and the Tenant did not leave the property reasonable clean.

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 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$	1,980.00	
	Lost rental	\$	416.00	
	Recover filing fee	\$	50.00	
	Subtotal:			\$2,446.00
Less:	Security Deposit	\$	400.00	
	Accrued Interest	\$	14.18	
	Subtotal:			\$ 414.18
	Balance Owing			\$ 2,031.82

Conclusion

An Order of Possession effective June 10, 2011 and a Monetary Order in the amount of \$2,031.82 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