



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, O, 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 retain the Tenant's security deposit, to recover the filing fee for this proceeding and for other considerations.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by posting on the Tenant's door due to the postal strike on June 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 there a loss or damage to the Landlord and if so how much?
5. Is the Landlord entitled to keep the Tenant's security deposit?
6. What other consideration are there?

Background and Evidence

This tenancy started on April 1, 2011 as a 1 year fixed term tenancy with an expiry date of March 31, 2012. Rent is \$405.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$202.50 on April 1, 2011.

The Landlord said that the Tenant did not pay \$405.00 of rent for June, 2011 when it was due and as a result, on June 3, 2011 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated June 3, 2011 on the door of the Tenant's rental unit. The Landlord said the Tenant has unpaid rent for July, 2011 of \$405.00 as well.

The Landlord further said the Tenant is living at the rental unit.

The Landlord also sought to recover a \$25.00 NSF fee that is written into the Tenancy agreement for June and July, 2011 and the Landlord requested 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 June 6, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than June 11, 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 June, 2011, in the amount of \$405.00 and for July, 2011 in the amount of \$405.00. I further find that the Landlord is entitled to recover the NSF charge of \$25.00 for each month of June and July, 2011.

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

	Rent arrears:	\$810.00	
	Late payment fees(2)	\$ 50.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$910.00
Less:	Security Deposit	\$202.50	
	Subtotal:		\$202.50
	Balance Owing		\$707.50

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$707.50 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