



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

<u>Dispute Codes</u>	Tenant MNDC, OLC, PSF, ERP, RP, LRE Landlord OPR, MNR, MNDC, FF
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Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession and a monetary order for unpaid rent and for loss or damage under the Act, regulations or the tenancy agreement.

The Tenant filed for monetary compensation for loss or damage under the Act regulation or tenancy agreement, to have the Landlord comply with the Act, to provide services and facilities, to do emergency and general repairs and to suspend or set conditions on the landlord's right to enter the rental unit.

Service of the hearing documents by the Landlord to the Tenant was done by personal delivery on June 22, 2011 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord was done by personal delivery June 29, 2011, in accordance with section 89 of the Act.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

At the start of the Hearing the Dispute Resolution Officer informed the parties that the main issue in the applications is the Notice to End Tenancy for unpaid rent. The Tenant's claims for repairs, for the Landlord to comply with the Act, for services and facilities and to restrict the Landlord right of entry are separate and unrelated dispute to the application to End Tenancy for unpaid rent. In section 2.3 of the Residential Tenancy Branch Rules of Procedure (Dismissing unrelated disputes in a single application) a Dispute Resolution Officer may dismiss unrelated disputes within an application. The Tenant's application is dismissed with leave to reapply.

Issues to be Decided

Landlord:

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?

Background and Evidence

This tenancy started on May 8, 2011 as a month to month tenancy. Rent is \$1,200.00 per month payable in advance of the 1st day of each month. The Tenant paid part of the security deposit in the amount of \$300.00 on May 7, 2011.

The Landlord said that the Tenant did not pay \$1,200.00 of rent for June, 2011, when it was due and as a result, on June 13, 2011 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated June 13, 2011. The Tenant acknowledges receiving the Notice to End Tenancy. The Landlord said the Tenant has unpaid rent for July, 2011 of \$1,200.00 as well.

The Landlord further indicated that the Tenant is living at the rental unit and the Tenant has not paid the unpaid rent. The Landlord requested an Order of Possession with the earliest effective vacancy date as possible as the Tenant has not disputed the 10 Day Notice to End Tenancy for Unpaid Rent.

The Landlord continued to say he has also made a claim for the Tenants unpaid security deposit of \$300.00.

The Tenant said he has not paid his rent for June and July, 2011 as he there was a mix up with social services and his cheques were delayed. The Tenant said he did offer the Landlord a cheque as partial payment of the unpaid rent, but the Landlord refused to accept it. The Landlord said he did not want to make any partial payment plans with the Tenant so he did not accept the cheque because it was not for the full amount of the rent that was unpaid. The Tenant continued to say that he has not applied to dispute the 10 Day Notice to End Tenancy and he is not disputing the Notice to End Tenancy in the hearing. The Tenant said he is prepared to move out and he said he would be out of the unit in two days. The Tenant said he understood he can re-apply for any monetary claims that he has with the Landlord in the future.

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 that day if it is personally delivered to the Tenant, or on June 13, 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 18, 2011.

I find that the Tenants have not paid the overdue rent and have not applied for dispute resolution to dispute the Notice to End Tenancy for Unpaid rent or utilities. 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 Tenants.

I also find that the Landlord is entitled to recover unpaid rent for June, 2011, in the amount of \$1,200.00 and July, 2011 in the amount of \$1,200.00. I further find that the Landlord is entitled to retain the portion of the Tenant's security deposit that was paid in the amount of \$300.00. The Landlord's request to have the Tenant pay the remaining \$300.00 of the security deposit is dismissed as the Tenancy is ending.

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 of \$300.00 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$2,400.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,450.00
Less:	Security Deposit	\$ 300.00	
	Subtotal:		\$ 300.00
	Balance Owing		\$2,150.00



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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 \$2,150.00 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