



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on July 1, 2010. Rent in the amount of \$991.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$479.50. The Tenant failed to pay rent for the month of July 2011 and on July 2, 2011 the Landlord served the Tenant with a notice to end tenancy for non-payment of rent by posting the Notice on the door. The Tenant has not filed an Application for Dispute Resolution. The Landlord claims \$991.00 for July 2011 rental arrears, \$20.00 for the July 2011 parking fee and \$25.00 for a late rent payment fee for a quantum amount of \$1,036.00.

The Tenant states that he did not pay the rent as the Landlord had refused to enter into a month to month lease following the end of the fixed term lease at which time the Tenant was required to vacate the unit. The Tenant states that the Landlord would only offer him a 3 month term lease and as the Tenant's circumstances had changed since the beginning of the tenancy, the Tenant was concerned that he may not be able to afford the rent and would have to break the lease to find another place. The Tenant states that he felt he had no option but to accept the Notice to end tenancy. The Tenant

moved out of the unit on July 15, 2011. The Tenant states that he returned two fobs to the Landlord and that he did not receive the fob deposit amount of \$100.00 paid to the Landlord at the onset of the tenancy. The Landlord confirms that the fobs were returned but not until August 1, 2011 and that the deposit on these fobs was not returned to the Tenant.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's evidence I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has not filed an application to dispute the notice and has not paid the outstanding rent. As the Tenant has moved out of the unit however, I find that the Landlord no longer requires an **Order of Possession**.

Section 44 of the Act sets out when a tenancy will end. Where a Landlord has elected to end a tenancy because of non-payment of rent, a tenant is not liable to pay rent after the tenancy agreement has ended pursuant to this section. If however, the tenant remains in possession of the premises, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. The Landlord in this case has elected to end the tenancy agreement for non-payment of rent by serving a 10 day notice to end tenancy with an automatically amended move-out date of July 15, 2011. As such, the Tenant is liable for rent to that date and I find that the Landlord has therefore established a monetary claim for **\$479.50** in unpaid rent, plus a **\$20.00** parking fee and a **\$20.00** late fee for July 2011. The Landlord is entitled to recovery of the **\$50** filing fee, for a total entitlement of **\$569.50**. The **security and fob deposits** will be off-set from the award made herein.

Calculation

Unpaid rent	\$479.50
Parking and late fees (20.00 + 20.00)	40.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and interest <i>to date</i>	-479.50
Less Fob deposits (\$50.00 x 2)	-100.00

Total Remaining owed to Tenant	\$10.00
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As an amount remains that is owed to the Tenant, I order the Landlord to provide this amount to the Tenant forthwith.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court. **I order** that the Landlord retain the **deposits** and interest of \$579.50 in satisfaction of the claim and I order the Landlord to return the remaining amount of \$10.00 to the Tenant.

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*.

Dated: August 16, 2011.

Residential Tenancy Branch