



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on August 11, 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?

Background and Evidence

This tenancy started in March 15, 2010 as a fixed term tenancy with an expiry date of May 31, 2013. Rent is \$1,450.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$725.00 on March 15, 2010.

The Landlord said that the Tenant has unpaid rent for April, 2011 of \$1,450.00, May, 2011 of \$1,450.00, June, 2011 of \$1,450.00, July, 2011 of \$1,450.00, and the Tenant did not pay the rent of \$1,450.00 for August, 2011 when it was due and as a result, on August 11, 2011 he personally delivered a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the Tenant. The Landlord said the Tenant has unpaid rent for September, 2011 of \$1,450.00 as well.

The Landlord also said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated July 14, 2011 with an effective vacancy date of August 15, 2011 on July 14, 2011. The reason for this notice was late payments of rent and non-payment of rent.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord requested an Order of Possession for as soon as possible.

The Landlord also sought to recover the \$100.00 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 on the day they are personally served or in this case on August 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 August 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(b) of the Act that the Landlord is entitled to an Order of Possession to take effect two days after the Order is served upon the Tenant.

I also find that the Landlord is entitled to recover unpaid rent from April, 2011 to August, 2011 in the amount of \$7,250.00. I further find that the Landlord is entitled to recover the rental income for September, 2011 in the amount of \$1,450.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$7,250.00	
September rent:	\$1,450.00	
Recover filing fee	\$ 100.00	
Subtotal:		\$8,800.00
 Balance Owing		 \$ 8,800.00

Conclusion

An Order of Possession effective two days after service of the Order on the Tenant and a Monetary Order in the amount of \$ 8,800.00 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