



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, OPR, 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 NSF charges, to retain the Tenant's security deposit 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 19, 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 December 1, 2010 as a fixed term tenancy with an expiry date of November 30, 2011. Rent is \$800.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$400.00 and a key deposit of \$20.00 on November 9, 2010.

The Landlord said that the Tenant did not paid rent for July, 2011 of \$800.00, when it was due and as a result, on July 16, 2011 the Landlord posted 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on the Tenant's door. The Landlord said his maintenance man witness the posting of the Notice. The Landlord said the Tenant has unpaid rent for August, 2011 of \$800.00 and September, 2011 of \$800.00 and the Landlord is requesting to recover a late fee of \$25.00 for the Tenant's NSF rent cheque.

The Landlord also said the Tenant has not paid the utility bills therefore the Utility Company has shut off the utilities, consequently the Landlord has requested an Order of Possession as soon as possible to protect the rental unit from damage.

The Landlord further indicated that the Tenant is living at the rental unit and he does not know what the Tenant's plans are.

The Landlord also sought 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 three days after it was posted on the Tenant's door or in this case on July 19, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than July 24, 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 July, 2011 to September, 2011 in the amount of \$2,400.00. I further find that the Landlord is entitled to recover the late rent payment fee of \$25.00 as well.

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:	\$2,400.00	
	Late fee:	\$ 25.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,475.00
Less	Security deposit	\$ 400.00	
	Key deposit	\$ 20.00	
	Subtotal		\$ 420.00
	Balance Owing		\$ 2,055.00

Conclusion

An Order of Possession effective two days after service of the Order on the Tenant and a Monetary Order in the amount of \$ 2,055.00 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