



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

Issue(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 keep the Tenant's security deposit?

Background and Evidence

This month-to-month tenancy started on January 15, 2008. Rent is \$735.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$362.50 at the beginning of the tenancy.

The Parties agree that on August 2, 2011 the Tenant was served with a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2011 when it was posted to the rental unit door. The Parties also agree that the Tenant made a partial payment of \$400.00 on September 1, 2011 for which she was given a receipt "for use and occupancy only." The Parties further agree that rent of \$335.00 remains outstanding for August 2011 and that September 2011 rent is unpaid.

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 either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a 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 will end 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 August 5, 2011. Consequently, the Tenant would have had to pay the full amount stated on the Notice or apply to dispute that amount no later than August 10, 2011.

I find that the Tenant has not paid the overdue rent in full 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 2 days after service of it on the Tenant. I also find that the Landlord is entitled to recover rent arrears for August 2011 in the amount of \$335.00 as well as the \$50.00 filing fee for this proceeding.

The Landlord also sought to recover unpaid rent for September 2011, however the Landlord's application did not include a claim for that relief and as a result, the Landlord must make a separate application for it. The Landlord also sought to recover a late payment fee of \$25.00. Section 7 of the Regulations to the Act says that a Landlord may charge a late payment fee of no more than \$25.00 *if* there is a term in the Parties' tenancy agreement to that effect. A term of the addendum to the Parties' tenancy agreement states that the Landlord may charge a late fee of \$50.00. I find that this term contravenes s. 7 of the Regulations to the Act and therefore pursuant to s. 5(2) of the Act, I find the late payment provision in the Parties' tenancy agreement is of no force and effect. Accordingly, the Landlord's application to recover late fees is dismissed without leave to reapply.

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 monetary award. The Landlord will receive a Monetary Order for the balance owing as follows:

Rent arrears:	\$335.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$385.00
Less: Security Deposit:	(\$362.50)
Accrued Interest:	<u>(\$5.23)</u>
Balance Owing:	\$17.27

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$17.27** 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*.

Dated: September 15, 2011.

Residential Tenancy Branch