



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.

The Landlord's agent said on September 28, 2011, she served the Tenant with the Application and Notice of Hearing by registered mail. According to the Canada Post online tracking system, the Tenant received this mail on September 29, 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.

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 July 15, 2008. Rent is \$575.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$287.50 at the beginning of the tenancy.

The Landlord's agent said the Tenant had rent arrears for the period, January 1 – August 31, 2011, and did not pay rent for September 2011 when it was due and as a result, on September 15, 2011, the Landlord's agent served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 15, 2011. The Landlord said two payments of \$289.50 were made on behalf of the Tenant on July 29, 2011 and September 27, 2011 respectively. The Landlord's agent said that in accepting the latter payment, she did not agree to reinstate the tenancy.

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.

I find that the Tenant was served in person on September 15, 2011 with the 10 Day Notice to End Tenancy. I also 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.

In the absence of any evidence from the Tenant to the contrary, I also find that the Landlord is entitled to recover rent arrears in the amount of \$4,596.00 as well as 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 \$287.50 and accrued interest of \$2.00 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears:	\$4,596.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$4,646.00
Less: Security Deposit:	(\$287.50)
Accrued Interest:	<u>(\$2.00)</u>
Balance Owing:	\$4,356.50

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$4,356.50** 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: October 26, 2011.

Residential Tenancy Branch