



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, 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 she served the Tenant on November 17, 2011 with the Application and Notice of Hearing by registered mail. Section 90(a) of the Act says a document delivered by mail is deemed to be received by the recipient 5 days later. 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 Landlord'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 fixed term tenancy started on May 1, 2011 and expires on April 30, 2012. Rent is \$1,050.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$525.00 at the beginning of the tenancy.

The Landlord's agent said the Tenant did not pay rent for September 2011 when it was due and as a result on September 8, 2011 the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 8, 2011 when it was posted to the rental unit door. The Landlord's agent said the Tenant paid the rent arrears on September 20, 2011 and was given a receipt saying the payment was accepted "for use and occupancy only." The Landlord's agent said the Tenant did not pay rent for October 2011 when it was due and as a result on October 6, 2011 the Tenant was served in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 6, 2011. The Landlord's agent said the Tenant made a payment

of \$1,400.00 on November 18, 2011 and was given a receipt stating that this payment was accepted "for use and occupancy only." The Landlord's agent said the Tenant currently has rent arrears of \$700.00 for November 2011.

Analysis

The Landlord's application for Dispute Resolution included a claim for an Order of Possession on the grounds that there was a breach of an agreement. However, I find that the Landlord was in error in selecting this relief on its application because it seeking to enforce a One Month Notice to End Tenancy for Cause dated November 1, 2011 (which alleged a breach of a material term) and therefore the Landlord should instead have selected an Order of Possession "*for cause*." The breach of an agreement refers to s. 55(2)(d) of the Act where the Parties have a written agreement to end the tenancy on a specified date but the Tenant refuses to vacate.

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 October 6, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than October 11, 2011. I find that the Tenant did not pay the overdue rent within the 5 days granted under s. 46(4) of the Act and did not apply 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 in the amount of \$700.00 for November 2011 as well as 2 late payment fees of \$25.00 each (for October and November) pursuant to a term in the Parties' tenancy agreement to that effect. Section 7(2) of the Act says that a Landlord may also recover bank charges it incurs as a result of a Tenant's returned cheque however a Landlord must provide evidence that it actually incurred those expenses. As the Landlord provided no evidence that it incurred these expenses, its claim for NSF fees in the amount of \$50.00 is dismissed without leave to reapply.

The Landlord is entitled pursuant to s. 72(1) of the Act to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) 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 follows:

Rent arrears November 2011:	\$700.00
Late payment fees:	\$50.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$800.00
Less: Security Deposit:	<u>(\$525.00)</u>
Balance Owing:	\$275.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$275.00** 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*.

Dated: November 30, 2011.

Residential Tenancy Branch