



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for loss or damage under the Act or tenancy agreement 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 at the Tenant's place of work on October 14, 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 on February 1, 2006 as a 1 year fixed term tenancy and then renewed as a month to month tenancy. Rent is \$1,012.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$440.00 on February 1, 2006. The Landlord submitted a letter from the Tenant agreeing to forfeit her security deposit in lieu of permission to have a pet in the rental unit for 1 year.

The Landlord said at the start of the hearing the Tenant moved out of the unit in the early part of October, 2011 and therefore he is withdrawing the request for an Order of Possession as he already has possession of the rental unit.

The Landlord said that the Tenant phoned him on September 24, 2011 and she said she was moving out of the rental unit at the start of October, 2011. The Landlord said he told the Tenant that she was responsible for the October rent because she did not give proper notice to move out of the unit. The Landlord said proper notice was 1 month after receiving written notice to move out. The Landlord continued to say the Tenant agreed that she would pay the October, 2011 rent of \$1,012.00. The Landlord said the Tenant did not pay \$1,012.00 of rent for October, 2011 when it was due and as

a result, on October 4, 2011 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated October 4, 2011 on the door of the Tenant's rental unit.

The Landlord also sought to recover the fee for his substitute service application of \$25.00 and to recover the \$50.00 filing fee for this proceeding.

Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 (1) of the Act says a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the Tenant did not give the Landlord proper written notice to end the tenancy, which in this situation would have been for October 31, 2011, if written notice was give on September 24, 2011. As well the Tenant has not paid the overdue rent, has not applied for dispute resolution and does not have the right to with hold part or all of the unpaid rent. Consequently, I find pursuant to s. 67 of the Act that the Landlord is entitled to a Monetary Order for the unpaid rent. The Landlord is entitled to recover unpaid rent for October, 2011 in the amount of \$1,012.00.

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 and the \$25.00 fee for the substitute service application. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$ 1,012.00	
Substitute service application fee	\$ 25.00	
Recover filing fee	<u>\$ 50.00</u>	
Subtotal:		\$1,087.00
Balance Owing		\$1,087.00

Conclusion

A Monetary Order in the amount of \$1,087.00 has been issued to the Landlord. A copy of the Orders must be served on the Tenant: 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