



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, 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, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on October 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 with both parties in attendance.

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?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on April 1, 2011 as a 1 year fixed term tenancy with an expiry date of March 31, 2012. Rent is \$425.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$212.50 on April 1, 2011.

The Landlord said that the Tenant did not pay \$425.00 of rent for October, 2011 when it was due and as a result, on October 2, 2011 she posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2011, on the door of the Tenant's rental unit. The Landlord said the Tenant has made payments towards the unpaid rent for October and November, 2011 and as of today the Tenant owes \$375.00 in unpaid rent for November, 2011 and the November late rent fee of \$25.00.

The Tenant said he agreed that he owed the \$375.00 in unpaid rent and the late fee of \$25.00. The Tenant continued to say he wants to continue the tenancy and he will be

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able to pay the unpaid rent of \$375.00, the November late rent fee of \$25.00 and the filing fee for this proceeding of \$50.00 on November 15, 2011.

The Landlord said she would consider continuing the tenancy if the Tenant paid her the unpaid rent, the late fee and the filing fee for a total of \$450.00 by November 15, 2011. The Landlord continued to say she would like to continue with her application and if she is successful she is request an Order of Possession for as soon as possible and a monetary order for the unpaid rent, late fee and filing fee for this proceeding.

The Tenant said he understood that the Landlord is continuing with her application, but she may continue the tenancy if he pays the Landlord for the unpaid rent and other fees.

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 door of the rental unit, or on October 5, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than October 10, 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(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for November, 2011 in the amount of \$375.00. I further find that the Landlord is entitled to recover the late charge of \$25.00 for November, 2011.

As the Landlord has been successful in this matter, she 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:



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	Rent arrears:	\$375.00	
	Late payment fees	\$ 25.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$450.00
Less:	Security Deposit	\$212.50	
	Subtotal:		\$212.50
	Balance Owing		\$237.50

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$237.50 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: November 8, 2011.

Dispute Resolution Officer