



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF,

Introduction

This matter dealt with an application by the Landlord for an Order of Possession, a Monetary Order for unpaid rent, compensation for damage or loss under the Act, regulations 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 they served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on October 20, 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. Is the Landlord entitled to end the tenancy?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to the unpaid rent and if so how much?
4. Is there a loss or damage and is the Landlord entitled to compensation for it?
5. Is the Landlord entitled to retain all or part of the Tenant's security deposit?

Background and Evidence

This tenancy started on May 1, 2011 as a fixed term tenancy with an expiry date of October 31, 2011. The tenancy renewed on a month to month basis after October 31, 2011. Rent is \$1,575.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$787.00 in May, 2011.

The Landlord said that the Tenant did not pay \$675.00 of rent for September, 2011, when it was due and as a result, on October 7, 2011, they posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated October 7, 2011 on the door of the Tenant's rental unit. The Landlord said the Tenant has paid the rent for September, 2011, but there is unpaid rent of \$1000.00 for November and there is a late rent payment fee of \$25.00 outstanding as well. The Landlord continued to say they issued receipts for late rent payments for "use and occupancy only" and the Landlord said they do not want to continue this tenancy. The Landlord requested an Order of Possession for as soon as possible. The Landlord said they want to end the tenancy because there is unpaid rent and rent payments are late most of the time.

The Landlord also sought to recover a \$25.00 late payment fee, that is written into the Tenancy Agreement, for November, 2011 and the Landlord requested to recover the \$50.00 filing fee for this proceeding.

The Tenant said she is having a difficult time at present, but she always pays her rent. This month the Tenant said the money was in the bank on the 1st, but for some reason that she was not aware of the bank held her rent payment cheque. The Tenant said she was going to the bank today to resolve the problem and she hoped to pay the rest of the rent tomorrow.

The Tenant continued to say that she has been patient with the repairs that have needed to be done to the rental unit and she wants to continue the tenancy. The Tenant said she has 3 children and she does not want to move. The Tenant also said she realizes she has been late with the rent on many occasions, but she has always paid her rent.

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 Tenant's rental unit, or on October 10, 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 15, 2011. The Landlord has accepted rent payments for 'use and occupancy only' which indicates the Landlord is not reinstating the tenancy. In addition the Tenant has unpaid rent for November, 2011 of \$1,000.00.

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 \$1,000.00. 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, they are 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:

| | | | |
|-------|--------------------|------------|------------|
| | Rent arrears: | \$1,000.00 | |
| | Late payment fee | \$ 25.00 | |
| | Recover filing fee | \$ 50.00 | |
| | Subtotal: | | \$1,075.00 |
| Less: | Security Deposit | \$787.00 | |
| | Subtotal: | | \$ 787.00 |
| | Balance Owing | | \$ 288.00 |

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$288.00 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 14, 2011.

Dispute Resolution Officer