



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 a loss of rental income, 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 he served the Tenant on January 13, 2012 with the Application and Notice of Hearing (the "hearing package") by registered mail. According to the Canada Post online tracking system, the Tenant received this mail on January 16, 2012. 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 tenancy started on June 23, 2010 as a fixed term tenancy which expired on June 30, 2011 and continued thereafter on a month-to-month basis. Rent is \$1,625.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$812.50 at the beginning of the tenancy.

The Landlord said the Tenant did not pay rent for October and November 2011 and as a result, on December 6, 2011, he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 6, 2011 by posting a copy of it on the rental unit door and by leaving a copy of it in the Tenant's mail box. The Landlord said the Tenant has not paid the overdue rent and has not paid rent for December 2011 and January 2012.

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 on December 6, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 6, 2011 when a copy of it was posted to the rental unit door and another copy of it was left in the Tenant's mail box. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days later, or on December 9, 2011. Consequently, the Tenant would have had to pay the rent arrears stated on the Notice or apply to dispute that amount no later than December 14, 2011.

The Landlord said he was advised by some of the Tenant's roommates that they paid their portion of the rent to the Tenant however he claimed the Tenant never paid it to him. In the absence of any evidence from the Tenant to the contrary, I find that the Tenant has not paid the overdue rent to the Landlord 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. I also find that the Landlord is entitled to recover rent arrears for October, November and December 2011 and January 2012 in the amount of \$6,500.00 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 \$812.50 in partial payment of the rent arrears. The Landlord will receive a Monetary Order for the balance owing as follows:

Rent arrears:	\$6,500.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$6,550.00
Less: Security Deposit:	(\$812.50)
Accrued Interest:	<u>(\$0.00)</u>
Balance Owing:	\$5,737.50

Given that the Tenant's roommates are not parties to the tenancy agreement, they are also required to vacate the rental unit pursuant to the Order of Possession and will have to recover their rent payments (if any) from the Tenant.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$5,737.50** 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: January 26, 2012.

Residential Tenancy Branch