



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, 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, 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's agent said he served the Tenant by registered mail on December 30, 2011 with a copy of the Application and Notice of Hearing (the "hearing package"). Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later (even if they refuse to pick up that mail). The Landlord's agent said he also advised the Tenant of the Dispute Resolution proceedings on January 7, 2012 when she came to his office to make a payment. 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. Are there 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 month-to-month tenancy started on October 15, 2011. Rent is \$850.00 per month payable in advance on the 1st calendar day of each month. The Tenant paid a security deposit of \$425.00 at the beginning of the tenancy.

The Landlord's agent said the Tenant did not pay rent for December, 2011 when it was due and as a result, on December 5, 2011 he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated December 5, 2011 by posting it to the rental unit door. The Landlord's agent said the Tenant made a payment of \$1,075.00 on January 7, 2012 for which she was given a receipt stating that the payment was accepted "for use and occupancy only." The Landlord's agent said the Tenant currently has unpaid rent for January, 2012 of \$597.00.

Analysis

Section 46(4) of the Act states that ***within 5 days of receiving a 10 Day 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. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on December 8, 2011. Consequently, the Tenant would have had to pay the rent arrears on the Notice *in full* or apply to dispute that amount ***no later than December 13, 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 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 unpaid rent and a loss of rental income for the balance of January 2012 in the amount of \$597.00 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 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing as follows:

Rent arrears:	\$597.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$647.00
Less: Security Deposit:	(\$425.00)
Accrued Interest:	<u>(\$0.00)</u>
Balance Owing:	\$222.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$222.00** 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: January 16, 2012.

Residential Tenancy Branch