



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession, for monetary compensation for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this application.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on March 2, 2012. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlords' 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. Are the Landlords entitled to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Are the Landlords entitled to compensation for unpaid rent and if so how much?
4. Are the Landlords entitled to retain the Tenant's security deposit?

Background and Evidence

This tenancy started on October 1, 2010 as a fixed term tenancy with an expiry date of September 30, 2011 and then it continued on a month to month basis. Rent is \$850.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$425.00 on September 15, 2010. The Landlord said the Tenant is living in the rental unit and the Landlord requested an Order of Possession for as soon as possible if they are successful with their application.

The Landlords said she submitted a copy of the Tenant's rent payment ledger and it shows total unpaid rent from various months in the total amount of \$10,330.00. The Landlord said the owner of the property has been very lenient with the Tenant's unpaid rent as they have been trying to work with the Tenant. The Landlord said the Tenant is now unable to pay the rent and as a result the Landlord has applied for an Order of Possession and a monetary claim for \$10,330.00 of unpaid rent.

The Landlord continued to say she served the Tenant with a 1 Month Notice to End the Tenancy on January 12, 2012 by personal delivery for unpaid and late rent payments.

Analysis

Policy Guideline 38 says that a landlord may end a tenancy where the tenant is repeatedly late paying the rent. Three late payments are a minimum number sufficient to justify a notice under these provisions.

The Landlord submitted evidence in the form of a copy of the Tenants rent payment ledger that shows the Tenant has unpaid rent of \$10,330.00 and has been late with the rent payment more than 3 times. Consequently I find the Landlord has proven grounds for an Order of Possession to be awarded to the Landlord.

Section 47(4) of the Act states that **within 10 days of receiving** a Notice to End Tenancy for Cause, a Tenant must apply for dispute resolution. If the Tenant fails to do either of this, then under section 47(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 on the day it was personally served, or on January 12, 2012. Consequently, the Tenant would have had to apply to dispute that amount no later than January 22, 2012.

I find that the Tenant 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 Landlords are entitled to recover unpaid rent in the total amount of \$10,330.00.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenant the \$100.00 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:	\$ 10,330.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$10,430.00
Less:	Security Deposit	\$ 425.00	
	Subtotal:		<u>\$ 425.00</u>
	Balance Owing		\$ 10,005.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$10,005.00 have been issued to the Landlords. 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*.

Dispute Resolution Officer