



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for lost rental income and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on June 5, 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.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is there lost rental income and if so how much?
3. Is the Landlord entitled to compensation for lost rental income and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

The Tenant moved into the rental unit on April 15, 2011 under a previous tenancy agreement and this tenancy started on December 1, 2011 as a fixed term tenancy with an expiry date of May 30, 2012. Rent is \$825.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$412.50 on May 30, 2011.

The Landlord said the tenancy is a fixed term tenancy that ended on May 30, 2012 and the Landlord wrote a letter to the Tenant on April 29, 2012 stating that the Landlord was not going to renew the tenancy and the Tenant must vacate the unit by May 31, 2012. The Landlord said they expected the Tenant to move out of the rental unit on May 31, 2012 and they had a new tenant ready to move in June 1, 2012. The Landlord continued to say that as the Tenant did not move out of the unit they had to find different accommodations for the new tenant.

Further the Landlord said the Tenant has not paid the June, 2012 rent and since they have not been able to rent the unit to a new tenant the Landlord has lost the rental income for the unit for June, 2012 in the amount of \$825.00. The Landlord said they want to end the tenancy with the Tenant and he requested an Order of Possession for as soon as possible. As well, the Landlord requested monetary compensation for the lost rental income for June, 2012 in the amount of \$825.00 plus the \$50.00 filing fee for this procedure.

Analysis

In this situation the tenancy agreement states the tenancy ends on May 30, 2012. The Landlord wrote the Tenant a letter dated April 29, 2012 state the tenancy was not renewing and the Tenant must vacate the rental unit by May 31, 2012. Consequently I accept the Landlord's evidence and testimony that this tenancy ended on May 31, 2012 and I find that the Tenant is an **overholding tenant** in the rental unit. As such the Landlord has established ground to be granted an Order of Possession with an effective vacancy date of 2 days after service of the Notice on the Tenant.

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has the right under this Act to deduct all or a portion of the rent.

Section 57 (3) of the Act says a landlord may claim compensation from an overholding tenant for the period the tenant occupies the rental unit after the tenancy has ended. I find the Landlord is entitled to compensation for the June, 2012 rent in the amount of \$825.00.

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

	Overholding Unpaid rent for June, 2012	\$ 825.00	
	Recover Filing Fee	<u>\$ 50.00</u>	
	Subtotal		\$ 875.00
Less	Security Deposit	\$ 412.50	
	Interest	<u>\$ 0.00</u>	
	Subtotal		\$ 412.50
	Balance Owing		<u>\$ 462.50</u>

Conclusion

An Order of Possession effective two days after service of the Notice on the Tenant and a Monetary Order in the amount of \$462.50 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*.

Residential Tenancy Branch