



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent 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 personal delivery on July 25, 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 with both parties present.

Issues(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 compensation for unpaid rent and if so how much?

Background and Evidence

The parties did not agree on when this tenancy started. The Tenant said the tenancy started April 1, 2012 and the Landlord thought it started in March or February. The parties did agree that the tenancy was a month to month tenancy and there was no written tenancy agreement. Rent is \$650.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$325.00 in May, 2012.

The Landlord said that the Tenant did not pay \$75.00 of rent for June, 2012 and \$650.00 of rent for July, 2012, when it was due and as a result, on July 11, 2012 the Landlord posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated July 11, 2012 on the door of the Tenant's rental unit. The Landlord said the Tenant also has unpaid rent for August, 2012 of \$50.00.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord requested an Order of Possession for as soon as possible.

The Tenant said he is living in the unit, but he is willing to move out. Tenant continued to say that he has unpaid rent for August, 2012 and that he has made the June and



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July, 2012 rent payments. The Tenant said he told the Landlord he could keep the security deposit of \$325.00 as a rent payment.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

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 3 days after it was posted, or on July 14, 2012. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than July 19, 2012.

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 June, 2012, in the amount of \$75.00 and the unpaid rent for July, 2012 in the amount of \$650.00. I further find that the Landlord is entitled to recover the unpaid rent for August, 2012 in the amount of \$50.00.

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. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$775.00	
Recover filing fee	\$ 50.00	
Subtotal:		\$825.00
Balance Owing		\$825.00



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Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$825.00 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*.

Dispute Resolution Officer