



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, 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 compensation for loss or damage under the Act or tenancy agreement, 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 she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on August 18, 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?
4. Is there a loss or damage to the Landlord and if so how much?
5. Is the Landlord entitled to compensation for the loss or damage and if so how much?
6. Is the Landlord entitled to retain the Tenant's security deposit as partial payment of rent arrears?

Background and Evidence

This tenancy started on December 15, 2009 as a fixed term tenancy with an expiry date of December 31, 2011 and then renewed as a verbal month to month tenancy. Rent is \$950.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$950.00 on November 20, 2009. The Tenant said he agreed to the over payment of the security deposit when they moved into the rental unit.

The Landlord said that the Tenant did not pay \$475.00 of rent for August, 2012 when it was due and as a result, on August 6, 2012 she personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated August 6, 2012 to the Tenant. The Landlord said the Tenant has unpaid rent for September, 2012 in the amount of \$575.00

as well. The Landlord continued to say that she issued receipts for partial rent payments for both August and September, 2012 as "Use and Occupancy Only".

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 Landlord also sought to recover a \$25.00 late rent payment fee for August and September, 2012. The Landlord said the late rent payment fee is written into the addendum of the Tenancy Agreement. The Landlord did not submit the addendum to the Tenancy Agreement in the written evidence package; therefore there was no corroborating evidence to support the request for the late fees in the amount of \$50.00 representing two months.

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

The Landlord also indicated that she is concerned about the amount of personal property that may be left in the rental unit when the Tenant moves out. The Landlord said she would access those issues after the Tenant is moved out.

The Tenant said he paid \$475.00 of rent for August, 2012 and because he had an overpayment of \$475.00 on his security deposit he thought the Landlord would use it to pay the balance of the August, 2012 rent. As well the Tenant believed that he had an agreement with the Landlord that a partial payment of rent in the amount of \$375.00 would cover the part of September, 2012 that it would take for him to move out. The Tenant said he has moved all his belongings out of the rental unit except a car that is parked on the rental property. The Tenant said the car should be moved by September 21 or 22, 2012.

The Tenant's Advocate said the Tenant has paid the full August, 2012 rent with the security deposit overpayment of \$475.00 and \$475.00 that the Tenant paid directly to the Landlord.

The Landlord said she did not make any arrangement with the Tenant about partial payments of rent for either August or September, 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 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 on the day that it is personally delivered, or on August 6, 2012. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 11, 2012. The Tenant stated that he paid the balance of the August rent with the overpayment of the security deposit which in effect would cancel the Notice to End Tenancy. The Tenant also said there was no agreement with the Landlord to apply the overpayment of the security deposit to the August, 2012 rent; therefore I find the August, 2012 rent was not fully paid.

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 at 1:00 p. m. on September 22, 2012.

I also find that the Landlord is entitled to recover unpaid rent for August, 2012, in the amount of \$475.00. I further find that the Landlord is entitled to recover unpaid rent for to September, 2012, in the amount of \$575.00.

I further find that the Landlord is not entitled to recover the late charge of \$25.00 for August and September, 2012 as the Landlord did not provide any corroborating evidence to support the claim for late fees.

As the Landlord has been partially successful in this matter, she 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 and over payment of the security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Office of Housing and Construction Standards

	Rent arrears:	\$1,050.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,100.00
Less:	Security Deposit	\$ 475.00	
	Over payment	\$ 475.00	
	Subtotal:		\$ 950.00
	Balance Owing		\$ 150.00

Conclusion

An Order of Possession effective at 1:00 p.m. on September 22, 2012 and a Monetary Order in the amount of \$150.00 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