



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, 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 as well as 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 on September 14, 2012 he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail to the rental unit address. Section 90(a) of the Act says a document delivered by mail is deemed to be received by the recipient five days later (even if they refuse to pick up the mail). 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. 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 keep the Tenant's security deposit?

Background and Evidence

This tenancy started approximately a year and a half ago. Rent is \$450.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$225.00 at the beginning of the tenancy.

The Landlord said he served the Tenant in person on August 30, 2012 with a One Month Notice to End Tenancy for Cause dated August 30, 2012. The Landlord said he later realized that he inserted the incorrect effective date on that Notice (ie. September 1, 2012) and therefore amended it to read, "October 1, 2012" and re-served the Tenant in person on August 30, 2012 with the amended Notice. The Landlord also claimed that the Tenant did not pay rent for September 2012 and paid only \$300.00 for rent for October 2012.

Analysis

Section 47(4) of the Act says that a Tenant who receives a One Month Notice to End Tenancy for Cause may dispute the Notice by filing an application for Dispute Resolution with the Residential Tenancy Branch within 10 days. If a Tenant does not dispute the Notice, then pursuant to s. 47(5) of the Act, the Tenant is deemed to have accepted that the tenancy will end on the effective date of the Notice and must vacate the rental unit. In the absence of any evidence from the Tenant to the contrary, I find that he was served in person on August 30, 2012 with a One Month Notice to End Tenancy for Cause dated August 30, 2012. I find that the Tenant has not applied for dispute resolution to cancel this Notice and as a result, pursuant to s. 47(4), he is deemed to have accepted that the tenancy will end on the effective date of the Notice.

Section 53 of the Act says that if an effective date on a Notice to End Tenancy is earlier than the earliest date permitted under the Act to end the tenancy, then the effective date is deemed to be the next earliest date that the tenancy could end. Section 47(2) of the Act says that a One Month Notice to End Tenancy cannot take effect earlier than one month after it is served on a tenant and must be the day before rent is due. Consequently, the effective date of the One Month Notice to End Tenancy for Cause dated August 30, 2012 is amended to read "October 31, 2012." As a result, I find that the Landlord is entitled pursuant to s. 55(2)(b) of the Act to an Order of Possession to take effect on October 31, 2012.

In the absence of any evidence from the Tenant to the contrary, I find that there are rent arrears for September 2012 of \$450.00 and for October 2012 of \$150.00. I also find that the Landlord is entitled pursuant to s. 72 of the Act to recover from the Tenant the \$50.00 filing fee he paid for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$225.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$425.00.

Conclusion

An Order of Possession to take effect on October 31, 2012 at 1:00 p.m. and a Monetary Order in the amount of \$425.00 have been issued to the Landlord. A copy of these 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: October 17, 2012.

Residential Tenancy Branch