



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, 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, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord's agent said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on September 26, 2012. According to the Canada Post online tracking system, the Tenant received this mail on September 27, 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.

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 on June 1, 2012. Rent is \$825.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$412.50 at the beginning of the tenancy.

The Landlord's agent said the Tenant had rent arrears of \$60.00 from August 2012 and did not pay rent for September 2012 when it was due and as a result, on September 13, 2012, the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 13, 2012 by posting it to the rental unit door. The Landlord said the Tenant made a partial payment of \$700.00 on September 26, 2012 for which she was given a receipt stating that the payment was accepted "*for use and occupancy only and did not reinstate the tenancy.*" The Landlord said the Tenant has made no further payments and rent for October 2012 is also unpaid.

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 either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution to cancel the Notice. If a 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 will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 13, 2012 when it was posted to the rental unit door. Pursuant to s. 90 of the Act, the Tenant is deemed to have received this Notice to End Tenancy three days later or on September 16, 2012. Consequently, the Tenant would have had to pay the amount of rent arrears alleged on the Notice or apply to dispute that amount no later than September 21, 2012.

I find that the Tenant has not paid the overdue rent in full within the 5 days required under s. 46(4) of the Act 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 2 days after service of it on the Tenant. I also find that the Landlord is entitled to recover rent arrears for September 2012 of \$185.00 and for October of \$825.00 as well as the \$50.00 filing fee for this proceeding. In summary, the Landlord is entitled to a total monetary award of \$1,060.00.

I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit of \$412.50 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$647.50.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$647.50** 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*.

Dated: October 30, 2012.

Residential Tenancy Branch