



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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 November 19, 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 in attendance.

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 the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started approximately 11.5 years ago and the current tenancy agreement started on August 1, 2008 as a 6 month fixed term tenancy and then it would renew on a month to month basis. Rent was \$1,375.00 and is now \$1,350.00 starting December, 2012 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$687.50 on March 14, 2012.

The Landlord said that the Tenant did not pay the rent for November, 2012 of \$1,375.00, 2010 when it was due and as a result, on November 2, 2012 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2012 on the door of the Tenant's rental unit. The Landlord said the Tenant has unpaid rent for December, 2012 of \$1,350.00 as well.

The Landlord further indicated that the Tenant is living at the rental unit and because of late payments of rent over the tenancy the Landlord said she wants to end the tenancy and so the Landlord requested an Order of possession for as soon as possible.

The Landlord also sought to recover a \$25.00 NSF fee for October, 2012 rent cheque and a late fee of \$20.00 for each month of November and December, 2012. Both the NSF fee and late rent payment fee are included in the tenancy agreement. The Landlord also requested the parking fees of \$45.00 for November and December, 2012, but these fees are not included in the tenancy agreement.

The Tenant said he does owe the money that the Landlord has claimed and he said he was not able to pay the rent because of financial difficulties that he is having. The Tenant said he has made arrangements to pay \$2,405.00 today or as soon as possible and he requested that the Landlord works with him to continue the tenancy.

The Landlord said she must follow company policy and so she is requesting an Order of Possession for as soon as possible and a monetary order for the money the Tenant owes the Landlord.

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 November 5, 2012. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than November 10, 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 November, 2012, in the amount of \$1,375.00 and the unpaid rent for December, 2012 in the amount of \$1,350.00.

I further find that the Landlord is entitled to recover the late charge of \$20.00 for November and December, 2012 and the NSF charge for October, 2012 of \$25.00.

In addition I dismiss the Landlord's request for the parking fees of \$45.00 for each month of November and December, 2012 as these charges are not in the tenancy agreement and therefore are a separate issue from the tenancy.

As the Landlord has been 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 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$2,725.00	
	Late payment fees(2)	\$ 40.00	
	Recover NSF fee	\$ 25.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,840.00
Less:	Security Deposit	\$ 687.50	
	Subtotal:		\$ 687.50
	Balance Owing		\$2,152.50

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$2,152.50 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