



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC

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, regulations or tenancy agreement and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on February 8, 2013. 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.

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 on December 1, 2009 as a month to month tenancy. Rent is \$2,000.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,000.00 on November 8, 2009.

The Landlord said that the Tenant did not pay \$2,000.00 of rent for January, 2013 when it was due and as a result, on January 5, 2013 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated January 5, 2013 to the Tenant at the Tenant's rental unit. The Landlord said the Tenant has unpaid rent of \$2000.00 for each month of February and March, 2013 as well.

The Landlord further indicated that the Tenant is living at the rental unit and the Tenant has told the Landlord that she will be moving out, but the Landlord said he does not know the Tenant's plans.

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 it is served in person, or on January 5, 2013. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than January 10, 2013.

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 January, 2013, in the amount of \$2,000.00, unpaid rent for February of \$2,000.00 and unpaid rent for March, 2013 of \$2,000.00.

As the Landlord has been successful in this matter, 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:	\$6,000.00	
	Subtotal:		\$6,000.00
Less:	Security Deposit	\$1,000.00	
	Subtotal:		\$1,000.00
	Balance Owing		\$5,000.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$5,000.00 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*.

Dated: March 05, 2013

Residential Tenancy Branch

