



Dispute Resolution Services

Page: 1

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 April 16, 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 with both the Landlord and the Tenant 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 on November 1, 2011 as a month to month tenancy. Rent is \$650.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$325.00 on November 1, 2011.

The Landlord said that the Tenant did not pay a total of \$1,625.00 of rent for January, February and March, 2013 when it was due and as a result, on March 18, 2013 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated March 18, 2013 on the door of the Tenant's rental unit. The Landlord said the Tenant has unpaid rent for April, 2013 of \$650.00 as well.

The Landlord Agent further indicated that the Tenant is living at the rental unit and the Landlord Agent said they are requesting an Order of Possession for as soon as possible.

The Landlord Agent said they also are seeking to retain the Tenant's security deposit and to recover the \$50.00 filing fee for this proceeding.

The Tenant said he spoke with the Landlord in early April, 2013 about making an arrangement to pay the unpaid rent over time and he said he offered the landlord \$650.00 for one month of the unpaid rent and \$800.00 over time to start paying the unpaid rent. The Tenant said the Landlord declined his offer and the Landlord said they wanted to end the tenancy.

The Tenant said he would like to continue the tenancy if possible and he would like to work out some arrangement with the Landlord.

The Landlord's Agent said the Landlord would like to end the tenancy as soon as possible, but they will try to work with the Tenant to give him time to find another rental unit.

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 March 21, 2013. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than March 26, 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 through to March, 2013 in the amount of \$1,625.00. I further find that the Landlord is entitled to recover unpaid rent for April, 2013 in the amount of \$650.00.

As the Landlord has been successful in this matter, they are 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:	\$2,275.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,325.00
Less:	Security Deposit	\$325.00	
	Subtotal:		\$ 325.00
	Balance Owing		\$2,000.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$2,000.00 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: April 25, 2013

Residential Tenancy Branch

