



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, OPR, MNR

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent. It should be noted the Landlord did not check off the correct boxes on the application, but the Landlord did write a full description of his request for an Order of Possession and a monetary order on the application in the area called "details of the dispute". I accept the Landlord's application for an Order of Possession and a monetary order for unpaid rent.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on April 5, 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?

Background and Evidence

This tenancy started in August, 1997 as a month to month tenancy. Rent is \$777.00 per month payable in advance of the 1st day of each month. The Landlord said he did not know if the Tenant paid a security deposit.

The Landlord said they had a previous dispute resolution hearing on January 11, 2012 when the Tenant promised to pay the unpaid rent. The Landlord said as a result of the Tenant's promise to pay the unpaid rent the Landlord withdrew their application for an Order of Possession. The Landlord continued to say that the Tenant has not paid the rent that is due in the amount of \$3,337.00 and the Landlord has now again applied for an Order of Possession and a monetary order for the unpaid rent. The Landlord supported his application with a copy of a 10 Day Notice to End Tenancy dated April 5,

2013 with an effective vacancy date of April 15, 2013 and the amount of unpaid rent on the Notice is \$3,337.00.

The Landlord requested an order of Possession for as soon as possible and for a monetary order so that the Landlord can recover the unpaid rent in the amount of \$3,337.00.

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 April 8, 2013. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than April 13, 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 in the amount of \$3,337.00

As the Landlord has been successful in this matter he will receive a monetary order for the balance owing of \$3,337.00.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$3,337.00 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 29, 2013

Residential Tenancy Branch

