



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 said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on April 11, 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 and pet deposits?

Background and Evidence

This tenancy started on September 1, 2012 as a 4 month fixed term tenancy with an expiry date of December 31, 2012 and then continued on a month to month basis. Rent is \$1,100.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$550.00 and a pet deposit of \$550.00 in May, 2012 which was from a previous tenancy with other tenants.

The Landlords said they issued a 2 Month Notice to End Tenancy dated March 15, 2013 due to a sale of the property. The Landlord said they understood the May, 2013 rent would be given to the Tenant as compensation for the 2 Month Notice to End Tenancy for Landlord's Use of the Property. The Landlord continued to say that the Tenant then did not pay the April, 2013 rent when it was due and as a result, on April 2, 2013 the Landlord posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated April 2, 2013 on the door of the Tenant's rental unit. The Landlord said the Tenant has not

paid the May, 2013 rent as well, but the Landlord said she was unsure if the May, 2013 rent was still given back to the Tenant as compensation for the 2 Month Notice to End Tenancy. The Landlord said they applied for \$2,750.00 in monetary claims, but they are now amending their total monetary claim to \$1,100.00 for the April, 2013 rent.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord requested an Order of Possession for as soon as possible so that the sale of the property can complete.

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 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 April 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 April, 2013, in the amount of \$1,100.00. I order the Landlord pursuant to s. 38(4) the Act to keep the Tenant's security deposit of \$550.00 and the Tenant's pet deposit of \$550.00 as full payment of the rent arrears

As the Landlords have been only partially successful in this matter, they are order to bear the cost of filing fee for this proceeding of \$50.00 which they have already paid. .

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

The Landlord is Ordered to retain the Tenant's security deposit of \$550.00 and the Tenant's pet deposit of \$550.00 as full settlement of the unpaid rent.

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: May 08, 2013

Residential Tenancy Branch

