



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, regulations 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 Agent said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on May 17, 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

The Tenant moved into the rental unit on May 1, 2012 and this tenancy agreement started on May 1, 2013 as a fixed term tenancy with an expiry date of October 31, 2013. Rent is \$2,500.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,250.00 on May 1, 2012.

The Landlord said that the Tenant did not pay \$2,500.00 of rent for May, 2013 when it was due and as a result, on May 5, 2013 he registered mailed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 3, 2013 to the Tenant. The Landlord said the Tenant paid \$2,000.00 on May 16, 2013 and \$500.00 on May 24, 2013, but the Landlord said the Tenant also has \$1,900.00 of unpaid rent for June, 2013.

The Landlord further indicated that the Tenant is living at the rental unit and as the Tenant is in arrears with the rent the Landlord requested an Order of Possession as well as a Monetary Order for the unpaid June, 2013 rent of \$1,900.00.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

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 5 days after it was registered mailed, or on May 10, 2013. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than May 15, 2013.

I find that the Tenant has not paid the overdue rent within the time limits on the 10 Day Notice to End Tenancy for Unpaid 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 June, 2013, in the amount of \$1,900.00.

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:	\$1,900.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,950.00
Less:	Security Deposit	\$1,250.00	
	Subtotal:		\$1,250.00
	Balance Owing		\$ 700.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$700.00 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: June 11, 2013

Residential Tenancy Branch

