



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Tenant CNR, CNC
	Landlord OPR, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent, to retain the security deposit as partial payment of unpaid rent and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notices to End Tenancy.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on January 16, 2012 in accordance with section 89 of the Act.

The Tenant did not attend the hearing therefore I dismiss the Tenant's application without leave to reapply.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent 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 retain the security deposit?

Background and Evidence

This tenancy started on December 1, 2012 as a fixed term tenancy with an expiry date of May 31, 2013 and then continued on a month to month basis. Rent is \$875.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$437.50 on December 1, 2012.

The Landlord said she is not sure if the Tenant has moved out of the rental unit, but the Tenant has not returned the keys to date. The Landlord continued to say the Tenant did not pay \$875.00 of rent for June, 2013 when it was due and as a result, on June 10, 2013 she personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated June 10, 2013 to the Tenant. The Landlord said the Tenant has unpaid rent for July of \$437.50 as well. The Landlord also said another tenant which is subleasing has not paid her security deposit of \$225.00 to the Landlord as of yet, but that is outside of this application.

The Landlord further indicated that she believes the Tenant is living at the rental unit and the Landlord requested an Order of Possession for as soon as possible.

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 on the day it was personally served, or on June 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 June 15, 2013. The Tenant did apply to dispute the Notice on June 14, 2013, but did not attend the hearing therefore the Tenant's application is dismissed and I find the Tenant is conclusively presumed to have accepted the tenancy ending. I find that the Tenant has not paid the overdue rent and the Tenant's application has been dismissed. 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 of \$875.00. I further find that the Landlord is entitled to recover a lost rental income for July, 2013 in the amount of \$437.50.

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:	\$875.00	
	Loss of Rental Income:	\$437.50	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,362.50
Less:	Security Deposit	\$437.50	
	Subtotal:		\$ 437.50
	Balance Owing		\$ 925.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$925.00 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: July 16, 2013

Residential Tenancy Branch

