



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on August 18, 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 parties 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?

Background and Evidence

This tenancy started on March 1, 2012 as a month to month tenancy. Rent is \$750.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$375.00 on February 21, 2012.

The Landlord said that the Tenant did not pay \$750.00 of rent for October, 2013 when it was due and as a result, on October 2, 2013 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2013 on the door of the Tenant's rental unit. The Landlord said the Tenant also has unpaid rent for November, 2013 of \$750.00.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord said he wants to end the tenancy as soon as possible.

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

The Tenant said he did not receive the 10 Day Notice to End Tenancy from the Landlord. As well the Tenant said he paid the Landlord's father \$1,200.00 on September 26 or 27, 2013 and \$300.00 on October 11, 2013, so the September and October, 2013 rent has been paid. The Tenant said he paid in cash and he did not get a receipt for the rent payments so he does not have any proof that the payments were made. The Tenant said the Landlord's father could testify that he made the September and October, 2013 rent payments, but the Landlord's father was not available for the hearing. The Tenant said he has unpaid rent for November, 2013 of \$750.00.

The Tenant said in closing that he has always paid his rent and he is a good tenant and does not cause any problems.

The Landlord said in closing that the Tenant has not paid the October and November, 2013 rent and he wants to end the tenancy as soon as possible.

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 October 6, 2013. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than October 11, 2013.

I accept the Landlord's testimony that the October and November, 2013 rent is not paid as the Tenant did not provide any evidence to support his claims that the rent was paid. Therefore, 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 October, 2013, in the amount of \$750.00 and unpaid rent for November, 2013 in the amount of \$750.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$1,500.00	
Recover filing fee	\$ 50.00	
Subtotal:		\$1,550.00
Balance Owing		\$1,550.00

It should be noted the Landlord did not apply to retain the Tenant's security deposit therefore the Landlord will deal with the security deposit as indicated in the Act.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,550.00 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: November 26, 2013

Residential Tenancy Branch

