



Dispute Resolution Services

Page: 1

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 retain the Tenant's security deposit as partial payment of the unpaid rent.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on November 1, 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 retain the Tenant's security deposit?

Background and Evidence

This tenancy started on September 6, 2011 as a 1 year fixed term tenancy with an expiry date of August 31, 2013 and then continued on a month to month basis. Rent is \$895.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$450.00 on August 22, 2013.

The Landlord said that the Tenant did not pay \$1,665.00 of rent for 2012 and \$3,185.99 of unpaid rent up from January, 2013 to October 11, 2013. The Landlord said total unpaid rent is \$4,850.99. Consequently the Landlord issued a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated October 11, 2013 on October 15, 2013 by registered mail. The Landlord said he served the Notice to End Tenancy by registered mail and the Landlord included a Canada Post receipt and tracking information in support of the service of the documents. The Landlord said the Tenant has unpaid rent

for November, 2013 of \$595.00 and the Tenant has unpaid rent of \$895.00 for December, 2013. The Landlord said the total unpaid rent is \$6,340.99.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord requested to end the tenancy 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 5 days after it was registered mailed, or on October 20, 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 25, 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 2012, in the amount of \$1,665.00 and unpaid rent from January to October, 2013 in the amount of \$3,185.99. Further I find the Landlord is entitled to recover unpaid rent for November, 2013 in the amount of \$595.00 and December, 2013 in the amount of \$895.00. The total award of unpaid rent to the Landlord is \$6,340.00.

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. 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:	\$6,340.99	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$6,390.99
Less:	Security Deposit	\$450.00	
	Subtotal:		\$ 450.00
	Balance Owing		\$5,890.99

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$5,890.99 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: December 16, 2013

Residential Tenancy Branch

