



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 353806 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, 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 registered mail on December 20, 2013. The Tenant said he received the Landlord's hearing package as stated by the Landlord. 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.

This hearing is a review hearing resulting from the original hearing dated January 13, 2014 in which the parties did not attend because of incorrect dial in information. The Landlord requested a review consideration because of the incorrect codes and was granted a new hearing on January 23, 2014 for March 17, 2014.

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 February 1, 2013 as a month to month tenancy. Rent is \$950.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$475.00 in advance of the tenancy. The Tenant said there was no move in condition inspection report completed and the Landlord said he had the move in condition inspection report signed by the parties and dated February 1, 2013. The report was not included in the evidence package.

The Landlord said that the Tenant has not pay rent of \$950.00 for the months of April, June, September, October, November, December, 2013 and for the month of January and March, 2014. The Landlord said the Tenant has 8 month of unpaid rent for a total of $8 \times \$950.00 = \$7,600.00$. As a result of unpaid rent the Landlord has issued eight 10 Day Notices for unpaid rent to the Tenant. The Landlord said the last 10 Day Notice for unpaid rent is dated December 6, 2013 which he posted on the door of the Tenant's rental unit on December 6, 2013.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord wants to end the Tenancy as soon as possible. The Landlord requested and Order of Possession.

The Landlord also sought to recover the \$100.00 filing fee for this proceeding.

The Tenant said he agreed with everything the Landlord said except he believes that he paid the April, 2013 rent and he has a copy of the money order showing the payment, but he does not have it in front of him and he did not send it in as evidence to support his claim that the April, 2013 rent was paid. The Landlord said the rental ledger shows the April, 2013 rent as unpaid.

The Tenant continued to say that he would like to stay in the rental unit and would like to make a repayment schedule for the arrears with the Landlord. The Landlord said he has not received any written requests from the Tenant since April 2013 about a repayment schedule and now the Landlord 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, he is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and he 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 December 9, 2013. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than December 14, 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 accept the Landlord's testimony and evidence with respect to unpaid rent and I find that the Landlord is entitled to recover unpaid rent for the months of April, June, September, October, November, December, 2013 and for the month of January and March, 2014 in the amount of \$7,600.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$100.00 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 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$7,600.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$7,700.00
Less:	Security Deposit	\$475.00	
	Subtotal:		\$ 475.00
	Balance Owing		\$7,225.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$7,225.00 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: March 17, 2014

Residential Tenancy Branch

