



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HENRY E. STERN
and [tenant name suppressed to protect privacy]

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 and unpaid utilities, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on July 17, 2014. 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 and utility arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and utilities and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on March 12, 2012 as a month to month tenancy. Rent is \$650.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$300.00 on March 15, 2012.

The Landlord said that the Tenant did not pay \$1,050.00 of rent and \$454.99 of utilities for July, 2014 when it was due and as a result, on July 4, 2014 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated July 4, 2014 on the door of the Tenant's rental unit. The Landlord said the Tenant has unpaid rent for August and September, 2014 as well in the amount of \$1,300.00 total.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord requested an Order of Possession for 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 July 7, 2014. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than July 12, 2014.

I find that the Tenant has not paid the overdue rent and utilities 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, 2014, in the amount of \$400.00, July in the amount of \$650.00, August, 2014 in the amount of \$650.00 and September, 2014 in the amount of \$650.00. I further find that the Landlord is entitled to recover the unpaid utilities in the amount of \$454.99 as unpaid utilities are treated the same as unpaid rent after the Landlord has made a formal demand for the utilities to be paid. The 10 Day Notice to End Tenancy includes the unpaid utilities and is the formal demand for payment.

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:	\$2,350.00	
	Utilities arrears	\$ 454.99	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,854.99
Less:	Security Deposit	\$300.00	
	Subtotal:		\$ 300.00
	Balance Owing		\$2,554.99

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$2,554.99 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: September 16, 2014

Residential Tenancy Branch