



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HELGA SCHATZ & VIKTOR SCHATZ
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

LANDLORD: OPR, MNR, MNSD, FF
TENANT: MNR, MNDC, OLC, ERP, RR

Introduction

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

The Landlords filed seeking an Order of Possession and a monetary order for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding. The Landlord said at the start of the hearing that he will refile for a damage claim after the Tenants move out and he knows the extent of the damage and the actual cost to do the repairs.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for costs for emergency repairs, for the Landlord to comply with the Act, regulations and tenancy agreement and for a rent reduction while repairs are being completed.

Service of the hearing documents by the Landlords to the Tenant were done by registered mail on August 5, 2014, in accordance with section 89 of the Act.

It should be noted that there was a clerical error on the two Notices of Hearing that were sent to the Landlord and Tenant. The Tenant's Notice stated the hearing started at 11:00 a.m. and the Landlords' Notice stated the hearing started at 11:30 a.m. Both Notices had the same dial in information for the conference call. The Arbitrator dialed in at 11:00 a.m. and waited until 11:30 a.m. to start the hearing so that both Notices were dealt with.

The hearing started at 11:30 a.m. as scheduled, however by 11:40 a.m. the Tenant had not dialled into the conference call. In the absence of any evidence from the Tenant to support the application, the Tenant's application is dismissed without leave to reapply.

Issues to be Decided

Landlord:

1. Is there unpaid rent and if so how much?
2. Are the Landlords entitled to unpaid rent and if so how much?

3. Are the Landlords entitled to retain the Tenant's security deposit?

Background and Evidence

This tenancy started on January 1, 2013 as a month to month tenancy. Rent is \$1,200.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$600.00 on December 14, 2012.

The Landlord said that the Tenant did not pay \$1,200.00 of rent for July, 2014 when it was due and as a result, on July 3, 2014 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated July 3, 2014 on the door of the Tenant's rental unit. The Landlord said the Tenant also has unpaid rent for August and September, 2014 in the amount of \$1,200.00 for each month.

The Landlord also indicated that he has applied for lost rental income for October, 2014 of \$1,200.00 as he does not have possession of the rental unit and he is concerned that he may not be able to rent it out for October 1, 2014 as the unit has been damaged by the Tenant and will need repair work.

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.

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

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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 6, 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 11, 2014. The Tenant did make an application on July 28, 2014 but the Tenant did not dispute the Notice to End Tenancy.

I find that the Tenant has not paid the overdue rent and has not applied to dispute the Notice to End Tenancy. 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 July, 2014, August, 2014 and September, 2014 in the amount of \$3,600.00. I further find that the Landlord is entitled to recover a loss of rental income for October, 2014 in the amount of \$1,200.00.

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 deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$3,600.00	
	Loss of Rental Income:	\$1,200.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$4,900.00
Less:	Security Deposit	\$ 600.00	
	Subtotal:		\$ 600.00
	Balance Owing		\$4,300.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$4,300.00 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.

The Tenant's application is dismissed without leave to reapply.

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 24, 2014

Residential Tenancy Branch