



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, 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 personal delivery on June 14, 2016. 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 keep the Tenant's security deposit?

Background and Evidence

This tenancy started on September 1, 2015 as an eight month fixed term tenancy with an expiry date of April 30, 2016. The parties initialed the clause in the tenancy agreement that stated the Tenant must move out of the unit at the end of the tenancy on April 30, 2016. Rent is \$1,200.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,000.00 on August 21, 2015.

The Landlord said that the Tenant is still living in the rental unit even though the tenancy has ended and the Landlord has requested the Tenant to move out a number of times in writing and verbally. The Landlord continued to say the Tenant has not paid the rent for May and June, 2016 in the amount of \$1,200.00 for each month and the Tenant has not paid any rent for July, 2016.

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 as the tenancy has ended. Further the Landlord requested a monetary order for the unpaid rent and the filing fee for this proceeding of \$100.00.

Analysis

The tenancy agreement is the contract between the Landlord and the Tenant and as such it is the document that governs or sets the rules of the tenancy. In this case the tenancy agreement states the tenancy ends on April 30, 2016 and the Tenant must vacate the rental unit at that time. Both the Landlord and the Tenant initialed this clause ending the tenancy and agreeing to vacate the rental unit. Therefore I find the Tenant is overholding in the rental unit. Consequently the Landlord is entitled to an Order of Possession for 2 days after service of the Order on the Tenant and a Monetary Order for the rent for the time period that the Tenant is overholding in the rental unit.

Consequently, I find pursuant to s. 55 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 overholding rent for May, 2016, in the amount of \$1,200.00, for June, 2016 in the amount of \$1,200.00 and for July in the amount of \$1,200.00 divided by 31 days = \$38.71 times 19 days (the date of the hearing) = \$735.48.

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 unpaid rent. The Landlord will receive a monetary order for the balance owing as following:

| | | | |
|-------|--------------------|------------|------------|
| | Unpaid Rent: | \$3,135.48 | |
| | Recover filing fee | \$ 100.00 | |
| | Subtotal: | | \$3,235.48 |
| Less: | Security Deposit | \$1,000.00 | |
| | Subtotal: | | \$1,000.00 |
| | Balance Owing | | \$2,235.48 |

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$2,235.48 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: July 19, 2016

Residential Tenancy Branch