



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 personal delivery on September 8, 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.

During the start of the conference call the Landlord said he did not include a request to retain the Tenant’s security deposit but he would like to use it as partial payment of unpaid rent. The Arbitrator accepted the Landlord’s request and amended the application to include the Tenant’s security deposit as partial payment of the Landlord’s application if the Landlord is successful.

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 June 1, 2016 as a month to month tenancy. Rent is \$700.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$300.00 in May, 2016.

The Landlord said that the Tenant has unpaid rent of \$400.00 for July, 2016 and \$700.00 for August, 2016. As the Tenant did not pay these amounts when they were due the Landlord personally delivered a 10 day Notice to End Tenancy for Unpaid Rent

dated August 19, 2016 to the Tenant. The effective vacancy date on the Notice is August 30, 2016. The Landlord said the Tenant has not moved out and the Tenant has not paid the rent for September, 2016 and October, 2016 in the amount of \$700.00 for each month. The Landlord said he is requesting \$2,500.00 in unpaid rent and an Order of Possession to end the tenancy as soon as possible.

The Landlord also requested to retain the Tenant's security deposit of \$300.00 as partial payment of the unpaid rent and to recover the filing fee of \$100.00.

Analysis

Section 46 of the Act states that within 5 days of receiving A Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution.

The Tenant was served the Notice to End Tenancy by personal delivery on August 19, 2016. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 24, 2016. The Tenant did not pay the unpaid rent and did not apply for dispute resolution; therefore the Notice to End Tenancy is valid. As the effective vacancy date on the Notice to End Tenancy is August 30, 2016 and that date is well past, I grant the Landlord an Order of Possession with an effective vacancy date of 2 days after service of the Order on the Tenant.

Section 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has the right under this Act to deduct all or a portion of the rent.

I find that the Landlord is entitled to recover of unpaid rent for July, August, September and October, 2016 in the amount of \$2,500.00.

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:

	Unpaid rent	\$2,500.00	
	Recover Filing Fee	<u>\$ 100.00</u>	
	Subtotal		\$2,600.00
Less	Security Deposit	\$ 300.00	
	Subtotal		<u>\$ 300.00</u>
	Balance Owing		<u>\$2,300.00</u>

Conclusion

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

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: October 26, 2016

Residential Tenancy Branch