



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter dealt with an application by the Landlord for An Order of Possession and a Monetary Order for unpaid rent.

This application was originally made through the Direct Request process but was moved to a participatory hearing because the proof of service of the 10 Day Notice to End Tenancy for Unpaid Rent was not signed by the Witness. The Landlord resubmitted the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent with the witness' signature on it.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on March 14, 2017. 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.

As the hearing was moved to a participatory hearing the Landlord requested the security and pet deposits be dealt with as well.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is the Landlord entitled to end the tenancy?
4. Is the Landlord entitled to retain the Tenant's security and pet deposits?

Background and Evidence

This tenancy started on October 31, 2013 as a fixed one year term tenancy and then continued as a month to month tenancy. Rent is \$900.00 per month payable on the 1st day of each month. A security deposit of \$425.00 and a pet deposit of \$425.00 were paid on October 25, 2013.

The Landlord said he is not sure if the Tenant is living in the rental unit, but he is requested an Order of Possession with an effective date as soon as possible.

The Landlord said that the Tenant did not pay \$290.00 of rent for March, 2017 and \$900.00 of rent for April, 2017.

The Landlord said his total claim is for \$1,190.00 and he is requesting to retain the security deposit of \$425.00 and the pet deposit of \$425.00 as partial payment of the unpaid rent.

Analysis

Section 26 says 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 a right under this Act to deduct all or a portion of the rent.

The Tenant did not have the right under the Act to withhold part or all of the rent for March or April, 2017; therefore I find in favour of the Landlord for the unpaid rent of \$1,190.00.

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 three days after the Notice is served on the door, or on March 5, 2017. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than March 10, 2017.

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.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the unpaid rent of \$1,190.00. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security and pet deposits in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	<u>\$ 1,190.00</u>
Subtotal:	\$ 1,190.00

Less:	Security Deposit	\$ 425.00
	Pet Deposit	<u>\$ 425.00</u>
	Subtotal:	\$ 850.00
	Balance Owing	<u>\$ 340.00</u>

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$340.00 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: April 18, 2017

Residential Tenancy Branch