



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR,

Preliminary matters

At the start of the hearing the Landlord's amendment to the application was reviewed as the monetary claim was increased from \$750.00 to \$2,373.00. The Landlord said it was due to utilities and cable expenses. The Tenant said he did not receive the amendment from the Landlord. The Landlord said they sent it to the Tenants by mail.

Further there was an issue with the uploading of the 10 Day Notice to End Tenancy for Unpaid Rent issued to the Tenants. The Landlord emailed the Notice to End Tenancy to the Arbitrator. The Tenant said he did not receive the 10 Day Notice to End Tenancy from the Landlord. The Landlord gave affirmed testimony that he personally delivered the 10 Day Notice to End Tenancy for Unpaid Rent dated March 21, 2018 on March 22, 2018 to the Tenant. The Tenant said he did not receive the Notice.

Introduction

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

The Landlord's agent said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on April 7, 2018. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

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?

Background and Evidence

This tenancy started on July 1, 2015 as a month to month tenancy. Rent is \$650.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$650.00 at the start of the tenancy. No condition inspection report was completed at the start of the tenancy.

The Landlord said that the Tenant did not pay \$750.00 of rent for March 2018, when it was due and as a result, on March 22, 2018 the Landlord personal delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated March 21, 2018 to the Tenant. The Landlord said they increased the rent from \$650.00 to \$750.00 with out a formal Notice of Rent Increase. The Tenant said he did not receive the 10 Day Notice to End Tenancy for Unpaid Rent from the Landlord. As well the Tenant said he paid the March 2018 rent in cash and the Landlord did not give him a receipt. The Landlord's agent said the rent for March, April and May have not been paid. The Tenant said he has not paid the April and May rent but he would agree to using the security deposit of \$650.00 for the rent payment.

Further the Tenant said they have found a new rental unit and will be moving out of this unit on May 12, 2018. The Landlord said they would like an Order of Possession for May 12, 2018 or earlier.

The Landlord's agent continued to say she believes the increase in the Landlord's monetary claim for utilities and cable costs is valid and the Landlord should receive \$2,373.00 as full compensation.

The Tenant said the Landlord did not serve him a 10 Day Notice to End Tenancy for Unpaid Rent. As well he paid the March 2018 rent and he is moving out on May 12, 2018, so the Tenant said the security deposit of \$650.00 should satisfy the Landlord's application. The Tenant did not submit any corroborative evidence to support his testimony.

Analysis

On the evidence submitted and on the balance of probabilities, I accept the Landlord's testimony and evidence that the Landlord served the Tenants in person on March 22, 2018 with a 10 Day Notice to End Tenancy for Unpaid Rent dated March 21, 2018.

Further I have reviewed the tenancy agreement and it does not mention the Tenants having to pay any utility or cable costs, therefore I dismiss the Landlord's claim for unpaid utilities and cable costs.

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 the day it is served personally, or on March 22, 2018. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than March 27, 2018.

I find that the Tenants have not paid the overdue rent and have 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. As the Tenants are moving out of the unit on May 12, 2018, I grant an Order of Possession to the Landlord effective at 1:00 p.m. on May 12, 2018.

I also find that the Landlord is entitled to recover unpaid rent for March, April and May 2018 in the amount of \$650.00 for each month in the total amount of \$1,950.00.

Further as the Tenant has volunteered the security deposit as payment for unpaid rent, I order the Landlord to retain the Tenants' security deposit of \$650.00 as partial payment of unpaid rent.

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

	Rent arrears:	\$1,950.00
	Subtotal:	\$1,950.00
Less:	Security Deposit	\$ 650.00
	Subtotal:	\$ 650.00
	Balance Owing	\$1,300.00

Conclusion

An Order of Possession effective May 12, 2018 and a Monetary Order in the amount of \$1,300.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: 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: May 01, 2018

Residential Tenancy Branch