



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 to end the tenancy, for an Order of Possession, for a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord's Counsel said the Landlord served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on September 19, 2018. 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?

Background and Evidence

This tenancy started on March 15, 2018 as a 1 year fixed term tenancy with an expiry date of March 15, 2019. Rent is \$1,900.00 per month payable on the 1st day of each month. The Landlord's Counsel said the Tenant was to pay a security deposit of \$950.00 and the Landlord received a cheque, but the cheque was returned NSF. The Landlord said the security deposit was not paid.

The Landlord said that the Tenant did not pay the full rent from the time the tenancy started. The Landlord's Counsel submitted a rent payment ledger showing payments due and the amounts and when the Tenant's payments were received. The balance owing by the Tenant as of September 1, 2018 is \$4,350.00. The Landlord said the amount of rent owing on the ledger is correct. Further the Landlord said he tried to work

with the Tenant but the rent arrears continued to grow and the Tenant stopped communicating with him. On June 22, 2018 the Landlord issued a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated June 22, 2018, by personal delivery to the Tenant. The Effective Vacancy Date on the Notice is incomplete but under section 53 of the Act an effective vacancy date is automatically corrected. The correct effective vacancy date is July 2, 2018, which is well past. The Landlord said the Tenant has unpaid rent for October 2018 in the amount of \$1,900.00 as well.

The Landlord's Counsel said the Landlord is requesting a total amount of compensation for unpaid rent in the amount of \$6,250.00.

The Landlord further indicated that the Tenant is living at the rental and the Landlord requested to end the tenancy as soon as possible.

The Landlord's Counsel also requested the recovery of the \$100.00 filing fee for this proceeding from the Tenant. .

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 on the day that the Tenant was personally served, or on June 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 June 27, 2018.

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.

Further Section 26 of the Act 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.

I find the Tenant does not have the right to withhold the rent payments therefore; I find that the Landlord is entitled to recover the unpaid rent outstanding as of September 1, 2018 in the amount of \$4,350.00 and the unpaid rent for October 2018 in the amount of \$1,900.00 for a total amount of \$6,250.00.

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 grant the Landlord a monetary order for \$6,350.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$6,350.00 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 30, 2018

Residential Tenancy Branch