



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, 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 she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on December 12, 2018. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlords' 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?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started in May 2017 as a verbal month to month tenancy. Rent is \$850.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$375.00 at the start of the tenancy.

The Landlord said that the Tenant did not pay \$850.00 of rent for December 2018 when it was due and as a result, on December 1, 2018 she personally delivered to the Tenant a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated December 1, 2018. The Landlord said the Tenant has unpaid rent for January 2019 of \$850.00 as well.

The Landlord further indicated that the Tenant has her belongings in the unit but the Landlord is not sure if the Tenant is living at the rental unit. The Landlord requested to end the tenancy as soon as possible and for an Order of Possession.

The Landlord also sought to recover the \$100.00 filing fee for this proceeding.

The Tenant said she was not sure if she owes any rent as she thought when a Tenant was evicted the Tenant did not have to pay the rent. The Tenant said she did not submit an application to dispute the Notice to End Tenancy.

The Tenant left the conference call shortly after her comments.

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 it was personally served to the Tenant, or on December 1, 2018. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than December 6, 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 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 unpaid rent for December 2018 and January 2019 in the amount of \$850.00 for each month for a total of \$1,700.00.

As the Landlord has been successful in this matter, she 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 rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$1,700.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$1,800.00
Less:	Security Deposit	\$375.00	
	Subtotal:		\$ 375.00
	Balance Owing		\$1,425.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,425.00 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: January 21, 2019

Residential Tenancy Branch