



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAI COMMERCIAL OKANAGAN
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Preliminary matter

This application was originally made under the Direct Request process which is a Ex-Parte process based on paper submissions only. As such the submissions must be complete and have no ambiguities. The Landlord's application indicated the same address for both the Landlord and the Tenant therefore it was unclear to the adjudicator if the rental unit had a shared bathroom and/or kitchen. If this was the case the Residential Tenancy Act would not have jurisdiction. Consequently the application was adjourned to a participatory hearing on today's date.

The Landlord confirmed the rental unit is a separate suite on the upper floor and the Landlord did live in the lower unit but has now moved out and a new tenant is in the lower unit. I find the Residential Tenancy Act does have jurisdiction.

Introduction

This matter dealt with an application by the Landlord for an Order of Possession, 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's agent said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on April 13, 2019. Based on the evidence of the Landlord's agent, 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?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on March 1, 2019 as a fixed term tenancy with an expiry date of August 30, 2019. Rent is \$1,825.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$600.00 on February 12, 2019.

The Landlord said that the Tenant did not pay \$1,825.00 of rent for March 2019 when it was due and as a result, on March 12, 2019 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated March 12, 2019 on the door of the Tenant's rental unit. The Landlord said the Tenant has unpaid rent for April and May 2019 in the amount of \$1,825.00 for each month as well.

The Landlord's agent further indicated that the Tenant is living at the rental unit. The Landlord continued to say that they have discussed a Mutual Agreement to End Tenancy but the Tenant has not responded. The Landlord's agent requested an order of possession for as soon as possible.

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

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 3 days after it was posted, or on March 15, 2019. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than March 20, 2019.

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.

I also find that the Landlord is entitled to recover unpaid rent for March, April and May, 2019, in the amount of 3 months X \$1,825.00 per month = \$5,475.00.

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 deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$5,475.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$5,575.00
Less:	Security Deposit	\$ 600.00	
	Subtotal:		\$ 600.00
	Balance Owing		\$4,975.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$4,975.00 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: May 27, 2019

Residential Tenancy Branch