



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Preliminary matter

The Tenant phoned in using a wifi network, which cause some audio issues, but the Tenant did make the connection and had an opportunity to hear the Landlord's testimony and to give his testimony.

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on May 24, 2019. 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 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 September 1, 2018 as a fixed term tenancy with an expiry date of December 31, 2018 and then was renewed to August 31, 2019. Rent is \$995.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$497.50 at the start of the tenancy.

The Landlord said that the Tenant did not pay \$995.00 of rent for May 2019 when it was due and as a result, on May 5, 2019 she posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities with both pages dated May 5, 2019 on the door of the Tenant's rental unit. The Landlord said the Tenant paid the May rent on May 18, 2019, but has unpaid rent for June and July 2019 in the amount of \$1985.00.

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

The Tenant said the 10 Day Notice to End Tenancy posted on his door only had the front page and he did not receive the Landlord's hearing package and Notice of Hearing. The Tenant said he phoned the Residential Tenancy Branch for the hearing information.

Further the Tenant said he paid the May 2019 rent on May 18, 2019. The Tenant agreed he has not paid the rent for June and July 2019. The Tenant said if the tenancy is ending he would like 1 month to find a new rental unit.

The Landlord said the rent is unpaid and the Tenant has caused issues in the rental complex so the Landlord is requesting an Order of Possession for as soon as possible.

Analysis

The Landlord provided tracking evidence to prove the Tenant was served her Hearing package by registered mail and the Landlord provided 2 pages of the 10 Day Notice as required by the Act. I accept the Landlord served the Tenant the Hearing Package and 10 Day Notice to End Tenancy as required by the Act.

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 May 8, 2019. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than May 13, 2019. The Tenant paid the May rent on May 18, 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(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 June and July 2019, in the amount of \$1,985.00.

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:	\$1,985.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$2,085.00
Less:	Security Deposit	\$497.50	
	Subtotal:		\$ 497.50
	Balance Owing		\$1,587.50

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,587.50 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: July 02, 2019

Residential Tenancy Branch