



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, 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 posting it on the door of the Tenant's rental unit on August 31, 2016. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by section 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 on July 7, 2016 as a verbal month to month tenancy. The Landlord said rent was \$1,150.00 plus \$75.00 for utilities for a total of \$1,225.00 per month. The Tenant said rent was \$1,150.00 plus cable of \$75.00 for a total of \$1,225.00 per month. Both parties agreed the rent was \$1,225.00 per month payable on the 1st of each month. The Tenant paid a security deposit of \$325.00 in July, 2016.

The Landlord said that the Tenant did not pay \$1,225.00 of rent for August, 2016 when it was due and as a result, on August 10, 2016 the Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 10, 2016 on the door of the Tenant's rental unit. The Landlord said she submitted a photograph of the service of the document and a witness statement to support the service of the Notice to End Tenancy.

As well the Landlord said the Tenant has unpaid rent for and September and October, 2016 of \$1,225.00 for each month. The Landlord said the Tenant has unpaid rent for three months of \$3,675.00 in total.

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

The Landlord also sought to recover the \$100.00 filing fee for this proceeding and to retain the Tenant's security deposit of \$325.00 as partial payment of the unpaid rent.

The Tenant said she did not receive the 10 Day Notice to End Tenancy for unpaid rent and she only received part of the evidence in the Landlord's hearing package. The Tenant said she agrees that she has not paid the rent for August, September and October, 2016 but the Tenant said she tried to e-transfer the rent payments to the Landlord and the Landlord did not accept the e-transfers. The Tenant said she did not send in any evidence to support this statement. The Tenant continued to say she is willing to pay the rent now.

The Tenant said in closing that she is out of province and her 18 year old son is at the rental unit. As a result the Tenant asked if she could have more time to move out if the Landlord is successful.

The Landlord said in closing that this has been a difficult tenancy and the Landlord would like to end it as soon as possible.

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.

I accept the Landlord's testimony and evidence that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated August 10, 2016 on August 10, 2016. 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 August 13, 2016. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 18, 2016.

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 August, September and October, 2016, in the amount of \$3,675.00.

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:	\$3,675.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$3,775.00
Less:	Security Deposit	\$ 325.00	
	Subtotal:		\$ 325.00
	Balance Owing		\$3,450.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$3,450.00 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 19, 2016

Residential Tenancy Branch