



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR, MNR, MNSD, FF, SS

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities as well as to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of a security deposit and for an order permitting him to serve the Tenants in a different way than required by the Act.

The Landlord served each of the Tenants with a copy of the Application and Notice of Hearing on December 18, 2008 by registered mail to the rental unit address. According to the Canada Post online tracking system, the items were unclaimed by the recipients. The Landlord claimed that on or about December 23, 2008, he received from another tenant in the rental property a copy of an unsigned Agreement to End the Tenancy on February 1, 2009 which was drafted by the Tenants. In that document, the Tenants indicated that the Landlord was aware that they would be out of the province from December 14, 2008 until January 10, 2009. The Tenants also claimed they would pay their rent and utility arrears by January 15, 2009 and if they did not, they would move out on January 15, 2009. The Tenants also claimed that they would contact the Landlord weekly while they were away.

The Landlord claimed he had no knowledge that the Tenants were leaving the province and did not know if they had in fact left as they had not contacted him. The Landlord said that the Tenants' mail had been picked up regularly to date and therefore he believes they have notice of the hearing. The Landlord also claimed that the Tenants have been avoiding him for some time now. I find pursuant to s. 89 of the Act that the Tenants were properly served with Notice of this hearing and the hearing proceeded in their absence.

Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and utilities and if so, how much?
3. Is the Landlord entitled to keep all or part of the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on September 1, 2008 and was to expire on February 1, 2009. Rent is \$1,000.00 per month payable on the 1st day of each month plus 40% of the utilities for the rental property which bills are in the Landlord's name. The Tenants paid a security deposit of \$500.00 at the beginning of the tenancy. The Landlord served the Tenants on December 10, 2008 with a 10 Day Notice for Unpaid Rent and Utilities dated December 10, 2008 which he posted on their door.

The Landlord claims that the Tenants are in arrears of rent for December, 2008 in the amount of \$870.00 and for January, 2009 in the amount of \$1,000.00. The Landlord also claimed that the Tenants are in arrears of utilities (gas and hydro) for November, 2008 in the amount of \$105.35 and have not paid December, 2008 utilities although he admitted that he had not yet given the Tenants a copy of the December bills.

The Landlord said that the Tenants have not paid anything since he served them with the Notice to End Tenancy dated December 10, 2008. The Landlord denied that there was any agreement between himself and the Tenants that they could pay the rent and utility arrears by January 15, 2009.

The Landlord also noted that the tenancy agreement provided that the Tenants would be entitled to occupy the lower unit of the rental property but that at some point during the tenancy, they moved into the upper rental unit without his knowledge or consent and the tenant of that rental unit moved into the lower unit. The Landlord said the other tenant subsequently moved out and the Tenants moved back into the lower unit but still have some possessions in the upper unit. The Landlord said the amount of rent and utilities was based on the Tenants occupying the smaller, lower unit in the rental property.

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 either pay the amount set out on the Notice or apply for dispute resolution. If a 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 must vacate the rental unit at that time. Under s. 90 of the Act, the Tenants are deemed to have received the Notice to End Tenancy 3 days after it was posted, or in this case, on December 13, 2008. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount within 5 days, or no later than December 18, 2008.

I find that the Tenants have not paid the amount indicated on the Notice and have not applied for dispute resolution. I also find that there was no agreement whereby the Landlord would allow the Tenants to pay the arrears later than the date indicated on the Notice. Consequently, pursuant to section 46(5) of the Act, the Tenants are

conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, which in this case is January 15, 2009.

The Landlord requested and I find he is entitled to an Order of Possession to take effect at 1:00 p.m. PST on January 15, 2009. I also find that the Landlord is entitled to recover rent arrears for December, 2008, for January 1-15, 2009, for loss of rental income for the balance of January, 2009 and utility arrears for November, 2008 as well as the \$50.00 filing fee for this proceeding. Pursuant to s. 38(4), 62(3) and 72 of the Act, I order the Landlord to keep the Tenants' security deposit plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears December 2008:	\$870.00
Rent arrears to January 15, 2009:	\$500.00
Loss of rent January 16-31, 2009:	\$500.00
November, 2008 Utilities:	\$105.35
Filing fee:	<u>\$50.00</u>
Subtotal:	\$2,025.35
Less: Security Deposit:	(\$500.00)
Accrued Interest:	<u>(\$2.50)</u>
BALANCE OWING:	\$1,522.85

Conclusion

An Order of Possession effective January 15, 2009 and a Monetary Order in the amount of **\$1,522.85** has been issued to the Landlord and a copy of the Orders must be served on the Tenants. 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.