



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

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent 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 pet damage deposit.

The Landlord served the Tenants in person on January 14, 2009 with a copy of the Application and Notice of Hearing in this matter. I find that the Tenants were properly served pursuant to s. 89 of the Act with the Notice of 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 if so, how much?
3. Is the Landlord entitled to keep all or part of the Tenants' security deposit and pet damage deposit?

Background and Evidence

This tenancy started on February 1, 2007. Rent is \$825.00 per month payable on the 1st day of each month. The Tenants paid a security deposit of \$400.00 on January 14, 2007 and a pet deposit of \$400.00 on January 19, 2007. The Landlord said the Tenants did not pay rent when it was due for January, 2009 and as a result, on January 3, 2009 she posted a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities on the Tenants' door. The Landlord said the Tenants made a payment of \$630.00 on January 14th, 2009 and were given a receipt indicating it was for use and occupancy only. The Landlord said the Tenants have not made any further payments and are now in arrears of rent for February, 2009.

The Landlord also claimed that clause 12 of the Parties' tenancy agreement provides for a \$25.00 late payment fee. The Landlord sought a late payment fee for January and February, 2009 rent.

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 Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or in this case, on January 6, 2009. 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 January 12, 2009 (as January 11th fell on a Sunday).

I find that the Tenants have not paid the full amount indicated on the Notice and have not applied for dispute resolution. Consequently, pursuant to section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice or on January 16, 2009.

The Landlord requested and I find pursuant to s. 55(2)(b) of the Act that she is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants. I also find that the Landlord is entitled to recover January 2009 rent arrears of \$195.00, rent arrears for the period February 1 - 17, 2009 of \$500.89, a loss of rental income for the balance of February 2009 of \$324.11, two late fees in the total amount of \$50.00 and 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 and pet damage 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 January 2009:	\$195.00
Rent arrears Feb. 1 – 17/09:	\$500.89
Loss of rental income to Feb. 28/09:	\$324.11
Late Payment fees:	\$50.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,120.00
Less: Security Deposit:	(\$400.00)
Accrued Interest:	(\$11.87)
Pet Deposit:	(\$400.00)
Accrued Interest:	<u>(\$11.79)</u>
Balance Owing:	\$296.34

Conclusion

An Order of Possession effective 48 hours after service of it on the Tenants and a Monetary Order in the amount of **\$296.34** have 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.