



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, (MND), MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a monetary order for unpaid rent, for damages to the rental unit as well as to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenants' security deposit.

The Landlord served the Tenants with a copy of the Application, Notice of Hearing and evidence package (the "hearing package") by registered mail on June 11, 2009. According to the Canada Post online tracking system, the Tenants received the hearing package on June 15, 2009. I find that the Tenants were served as required by s. 89 of the Act and the hearing proceeded in their absence.

Issues(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 compensation for damages and if so, how much?
4. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on March 1, 2009 and was to expire on August 31, 2009. Rent is \$850.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$425.00 at the beginning of the tenancy.

The Landlord said the Tenants did not pay rent for May 2009 when it was due and as a result his son served the Tenants in person on May 16, 2009 with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated May 16, 2009. The Landlord said the Tenants still have arrears of \$200.00 for May rent and have not paid rent for June and July 2009.

The Landlord also said that the Tenants did not have the use of a garage on the rental property, but nevertheless stored household garbage in it. The Landlord said he told the Tenants to remove the garbage and they agreed they would. The Landlord claimed that sometime later he discovered the Tenants had not removed the garbage but

instead had added to it and it was attracting flies and rodents. Consequently, the Landlord said he incurred \$300.00 to have someone remove the garbage.

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.

I find that the Tenants received the 10 Day Notice on May 16, 2009 but failed to pay the full amount of rent arrears and have not applied for dispute resolution. Consequently, pursuant to section 46(5), the Tenants are conclusively presumed to have accepted that the tenancy would end on May 26, 2009. As a result, I find that the Landlord is entitled pursuant to s. 55(2)(b) of the Act 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 rent arrears of \$1,480.65 and loss of rental income for July 2009 in the amount of \$219.35, garbage disposal expenses of \$300.00 as well as the \$50.00 filing fee for this proceeding. The Landlord may apply for a further loss of rental income. 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 – May 2009: | \$200.00 |
| Rent arrears – June 2009: | \$850.00 |
| Rent arrears – July 1-23, 2009: | \$630.65 |
| Loss of rent – July 24–31, 2009: | \$219.35 |
| Garbage removal: | \$300.00 |
| Filing fee: | <u>\$50.00</u> |
| Subtotal: | \$2,250.00 |
| Less: Security Deposit: | (\$425.00) |
| Accrued Interest: | <u>(\$0.00)</u> |
| BALANCE OWING: | \$1,825.00 |



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Conclusion

An Order of Possession effective 48 hours after service of it on the Tenants and a monetary order in the amount of **\$1,825.00** have been issued to the Landlord. 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.

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 23, 2009.

Dispute Resolution Officer