



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 compensation for damages to the rental unit and to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenants' security deposit.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there rent arrears 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 tenancy started on December 15, 2008. Rent is \$975.00 per month payable in advance on the 15th day of each month. The Tenants paid a security deposit of \$487.50 at the beginning of the tenancy.

The Landlord claims that the Tenants did not pay rent for the period June 15 – July 14, 2009 when it was due and as a result, she served the Tenants with a 10 Day Notice to End Tenancy by registered mail on June 25, 2009 which the Tenants received on July 2, 2009. The Landlord said that the Tenants have only paid \$400.00 since they were served with the Notice and are now also in arrears of rent for the periods, July 15 – August 14, 2009 and August 15 – September 14, 2009. In support of her position, the Landlord provided a list of payments made by the Tenants throughout the tenancy.

The Landlord also claimed that the Tenants were responsible for damaging a carpet in the rental unit but admitted that she had not yet viewed the carpet and did not know the extent of the alleged damage.

The Tenants admitted that they did not pay rent for the period June 15 – July 14, 2009 when it was due but claimed that they had the Landlord's permission to pay the arrears when they received an EI payment. The Tenants admitted that they still did not pay rent

when they received the EI payment because they claimed the Landlord refused to make repairs to a toilet that was overflowing.

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 were deemed to have received the Notice to End Tenancy 5 days after it was mailed or on June 30, 2009. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than July 6, 2009 (as the 5th was 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, 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 \$575.00 for the period June 15 to July 14, 2009, \$975.00 for the period July 15 – August 14, 2009 and \$188.71 for the period August 15 – 20, 2009. The Landlord may reapply for a loss of rental income if the Tenants continue to occupy the rental unit after August 20, 2009.

I find that the Landlord's application for damages to the rental unit is premature and that part of her claim is also dismissed with leave to reapply. As the Landlord has been successful in this matter she is entitled to recover the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4), of the Act, 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:	\$1,738.71
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,788.71
Less: Security Deposit:	(\$487.50)
Accrued Interest:	<u>(\$0.34)</u>
BALANCE OWING:	\$1,300.87



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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 **\$1,300.87** 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: August 20, 2009.

Dispute Resolution Officer