



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF

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.

The Landlord served the Tenants by registered mail on August 21, 2009 with a copy of the Application and Notice of Hearing. According to the Canada Post online tracking system, the Tenants received the hearing package on August 24, 2009. I find pursuant to s. 89 of the Act that the Tenants were properly served with the 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 rent arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This one year fixed term tenancy started on March 1, 2009. Rent is \$975.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$450.00 on February 27, 2009.

The Landlord claims that the Tenants did not pay rent for July and August 2009 when it was due and as a result, on August 4, 2009 the Landlord served the Tenants by registered mail with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated August 4, 2009. The Landlord said the Tenants subsequently acknowledged that they received the Notice in a text message to him. The Landlord also said that the Tenants have not paid the arrears set out on the Notice and now have rent arrears for September and October 2009.

Analysis

Section 52 of the Act says that a Notice to End Tenancy when given by a Landlord must be in the approved form. The Landlord provided the 1st page of the 2 page 10 Day



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Notice to End Tenancy form as evidence at the hearing. The Landlord said that he served the Tenants with all 2 pages of this Notice. In the absence of any evidence from the Tenants to the contrary, I find that the Tenants were served with a Notice that complies with s. 52 of the Act and is enforceable.

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 5 days after it was mailed or on August 9, 2009. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than August 14, 2009.

I find that the Tenants have not paid the amount indicated on the Notice and have not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord 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 rent arrears for July, August, September and October 1-15, 2009 in the amount of **\$3,412.50**, as well as loss of rental income for the period October 16 – 31, 2009 in the amount of **\$475.50** and 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 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears:	\$3,412.50
Loss of rental income:	\$487.50
Filing fee:	<u>\$50.00</u>
Subtotal:	\$3,950.00
Less: Security Deposit:	(\$450.00)
Accrued Interest:	<u>(\$0.00)</u>
BALANCE OWING:	\$3,500.00

Conclusion

An Order of Possession effective 48 hours after service of it on the Tenants and a monetary order in the amount of **\$3,500.00** have been issued to the Landlord. A copy of the Orders must be served on the Tenants; the Order of Possession may be enforced



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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 14, 2009.

Dispute Resolution Officer