



Dispute Resolution Services

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Residential Tenancy Branch
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 the Tenants' security deposit.

The Landlord served the Tenants by registered mail on October 19, 2009 with a copy of the Application and Notice of Hearing. According to the Canada Post online tracking system, a notification card was delivered to the Tenants on October 20, 2009, however they did not pick up the hearing package. 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 all or part of the Tenants' security deposit?

Background and Evidence

This fixed tenancy started on April 1, 2009 and was to expire on March 31, 2010. Rent is \$995.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$497.50 on March 28, 2009.

The Landlord claims that the Tenants did not pay rent for September, 2009 when it was due and as a result on September 28, 2009 she served the Tenants in person with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated September 28, 2009. The Landlord said that the Tenants have not paid the arrears set out on the Notice in and are now in arrears of rent for October, 2009.

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



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at that time. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than October 5, 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 in the amount of \$1,990.00 as well as the \$50.00 filing fee for this proceeding. As the fee for parking is not included in the tenancy agreement, I find that the Landlord is not entitled to recover that amount under the Act. I order the Landlord pursuant to s. 38(4), and 72 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:	\$1,990.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$2,040.00
Less: Security Deposit:	(\$497.50)
Accrued Interest:	<u>(\$0.00)</u>
BALANCE OWING:	\$1,542.50

Conclusion

An Order of Possession to take effect 48 hours after service of it on the Tenants and a Monetary Order in the amount of **\$1,542.50** 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: October 27, 2009.

Dispute Resolution Officer