



Dispute Resolution Services

Page: 1

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 Landlords for an Order of Possession and a Monetary Order for unpaid rent and utilities, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlords originally filed their application to be heard as a Direct Request Proceeding, however, it was reconvened to today's date for further evidence. As part of that Proceeding, the Landlords provided evidence that they served the Tenant with the Application and Notice of Direct Request Proceeding by registered mail on September 30, 2009. A Notice of Reconvened Hearing was also sent to the Tenant by registered mail on October 29, 2009 at the rental unit address advising him of this hearing. Consequently, I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Are the Landlords entitled to end the tenancy?
2. Are there arrears of rent and utilities and if so, how much?
3. Are the Landlords entitled to keep the security deposit?

Background and Evidence

This tenancy started prior to June 1, 2009, however on May 26, 2009, the Parties entered into a new, written tenancy agreement to take effect on June 1, 2009. Rent was \$975.00 per month payable in advance on the 1st day of each month plus gas and hydro which were to be added to rent in the combined amount of \$125.00 per month. The Tenant paid \$243.74 of the required \$487.50 security deposit by way of 2 payments made in July and August, 2009.

The Landlords claim that the Tenant had arrears of utilities of \$504.91 as of May 31, 2009 and as a result, another term of the tenancy agreement was that he would make 4 payments of \$126.23 in satisfaction of those arrears. The Landlords said that the Tenant made only two payments and therefore still has arrears of \$252.45. The Landlords also said that the Tenant did not pay rent and utilities for September 2009



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

when it was due and as a result on September 14, 2009, they posted a 10 Day Notice to End Tenancy dated September 14, 2009 on the Tenant's door. The Landlords claim that the Tenant has not paid those arrears and has not paid rent or utilities for October and November, 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 overdue rent 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 they 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 on September 17, 2009. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than September 23, 2009.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlords are entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant. I also find that the Landlords are entitled to recover rent and utility arrears in the amounts set out below as well as the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit plus accrued interest in partial payment of the rent arrears. The Landlords will receive a monetary order for the balance owing as follows:

September rent arrears:	\$975.00
September utility arrears:	\$125.00
October rent arrears:	\$975.00
October utility arrears:	\$125.00
November 1-18 rent arrears:	\$585.00
November 1-18 utility arrears:	\$75.00
Utility arrears to May 31, 2009:	\$252.45
Filing fee:	<u>\$50.00</u>
Subtotal:	\$3,162.45
Less: Security Deposit:	(\$243.74)
Accrued Interest:	<u>(\$0.00)</u>
BALANCE OWING:	\$2,918.71



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

An Order of Possession to take effect 48 hours after service of it on the Tenant and a Monetary Order in the amount of **\$2,918.71** have been issued to the Landlords. A copy of the Orders must be served on the Tenant; 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: November 18, 2009.

Dispute Resolution Officer