



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 and to recover the filing fee for this proceeding as well as to keep the Tenants' security deposit in payment of those amounts.

The Landlord served the Tenants by registered mail on October 16, 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 rental unit address, however on November 6, 2009 the Tenants refused to accept the hearing packages. I find that the Tenants were served as required by s. 89 of the Act and the hearing proceeded in the Tenants' 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 fixed term tenancy started on August 26, 2009 and expires on February 28, 2010. Rent is \$800.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$400.00 on August 24, 2009.

The Landlord claims that the Tenants did not pay rent for October, 2009 in full and as a result, on October 5, 2009 the Landlord served the Tenants in person with a Notice to End Tenancy for Unpaid Rent and Utilities dated October 5, 2009. The Landlord said that the Tenants have not paid the arrears for October 2009 rent and moved out on or about November 10, 2009 without paying rent for November, 2009.

Analysis

I find that the Landlord is entitled to recover rent arrears for October 2009 in the amount of \$400.00 and rent arrears for November 1 – 10, 2009 in the amount of \$266.67 as well as \$50.00 for 2 late payment fees and the \$50.00 filing fee for this proceeding.

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RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. Although the Tenants moved out on November 10, 2009, I find that the Landlord was unable to re-rent the rental unit for the balance of that month and is therefore also entitled to recover a loss of rental income for November 11 - 30, 2009 in the amount of \$533.33.

I order the Landlord pursuant to s. 38(4) and s. 72 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:

Unpaid Rent:	\$1,200.00
Late fees:	\$50.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,300.00
Less: Security Deposit:	(\$400.00)
Accrued Interest:	<u>(\$0.00)</u>
BALANCE OWING:	\$900.00

Conclusion

The Landlord's application for an Order of Possession is abandoned. A Monetary Order in the amount of **\$900.00** has been issued to the Landlord. A copy of the Order must be served on the Tenants and may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

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: December 01, 2009.

Dispute Resolution Officer