

DECISION

Dispute Codes CNR, FF
 OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent as well as to recover the filing fee for this proceeding. The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent 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. Does the Landlord have grounds to end the tenancy?
2. Are there arrears of rent and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This month to month tenancy started on February 2, 2010. Rent is \$750.00 per month payable in advance on the 2nd day of each month plus one-half of the utilities (gas and hydro) for the rental property. The Tenants paid a security deposit of \$375.00 on February 3, 2010.

The Landlord said the Tenants did not pay rent for February 2010 when it was due and as a result on February 6, 2010, the Landlord served the Tenants in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 6, 2010. The Landlord said the Tenants have not paid rent for February or March 2010. The Landlord also said the Tenants were given a copy of the February utility bills approximately a month ago but that they have not paid for February 2010 utilities.

The Tenants admit that rent and utilities are unpaid as alleged by the Landlord but claim that he agreed in writing to extend the time to pay to February 17, 2010 and then made a complaint to social services with the result that the Tenants' sole source of income was cut off.

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. Although the Tenants applied to cancel the 10 Day Notice within the 5 day time limit, I find that there are no grounds for their application because rent and utilities remain unpaid. Consequently, the Tenants' application is dismissed without leave to reapply.

I find pursuant to s. 55(1) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenants. I also find that the Landlord is entitled to recover unpaid rent for February and March 2010 in the amount of \$1,500.00, unpaid utilities for the period, February 2 – 24, 2010, in the amount of \$61.84 as well as the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 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:

Unpaid Rent:	\$1,500.00
Unpaid Utilities:	\$61.84
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,611.84
Less: Security Deposit:	(\$375.00)
Accrued Interest:	<u>(\$0.00)</u>
BALANCE OWING:	\$1,236.84

Conclusion

An Order of Possession to take effect 2 days after service of it on the Tenants and a Monetary Order in the amount of \$1,236.84 have been issued to the Landlord and 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: March 30, 2010.

Dispute Resolution Officer