



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, (MNR), MNSD, O

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent as well as to keep the Tenants' security deposit and pet damage deposit in partial payment of those amounts.

The Landlords said they served the Tenants with the Application and Notice of Hearing (the "hearing package") in person on June 25, 2010 and by registered mail on June 28, 2010. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing package(s) as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

At the beginning of the hearing, the Landlords sought to amend their claim to include an amount for unpaid rent for July and August 2010. I find that it would serve no purpose to make the Landlords reapply for this relief and would likely result in both Parties incurring additional expenses (eg. such as another filing fee passed onto the Tenants). Consequently, the Landlords' application is amended to include a claim for unpaid rent for July and August 2010.

Issues(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Are the Landlords entitled to keep the Tenants' security deposit and pet damage deposit?

Background and Evidence

This fixed term tenancy started on April 2, 2010 and expires on September 30, 2010. Rent is \$2,000.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$1,000.00 and a pet deposit of \$100.00 at the beginning of the tenancy.

The Landlords said the Tenants had rent arrears of \$400.00 for May 2010 and did not pay rent for June 2010 when it was due and as a result, on June 8, 2010, the Landlords'



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agent served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 8, 2010. The Landlords said the Tenants made a payment of \$1,490.00 on June 15, 2010, but have made no further payments since that time and now also have rent arrears for July and August 2010.

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. Consequently, the Tenants would have had to pay the amount stated to be in arrears on the 10 Day Notice or apply to dispute that amount no later than June 13, 2010.

I find that the Tenants have not paid all of the overdue rent 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 Landlords are entitled to an Order of Possession to take effect 2 days after service of it on the Tenants.

I also find that the Landlords are entitled to recover rent arrears in the amount of \$4,071.29 (to August 18, 2010), a loss of rental income for the period August 19 – 31, 2010 in the amount of \$838.71 and 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 Tenants' security deposit and pet damage deposit in partial payment of the rent arrears. The Landlords will receive a monetary order for the balance owing as follows:

May Rent arrears:	\$400.00
June Rent:	\$2,000.00
July Rent:	\$2,000.00
August rent:	\$1,161.29 (August 1 – 18, 2010)
Loss of rent:	\$838.71 (August 19 - 31, 2010)
Filing fee:	<u>\$50.00</u>
Subtotal:	\$6,450.00
Less: Payment:	(\$1,490.00)
Security Deposit:	(\$1,000.00)
Pet Deposit:	<u>(\$100.00)</u>
Balance Owing:	\$3,860.00



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Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$3,860.00** have been issued to the Landlords. 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: August 18, 2010.

Dispute Resolution Officer