



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, FF
CNC, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. The Tenants applied to cancel a One Month Notice to End Tenancy for Cause dated June 18, 2010, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

The hearing started at 11:00 a.m. as scheduled, however by 11:10 a.m., the Tenants (who are also Applicants) had not dialled into the conference call. The Landlord said he served his Application, Notice of Hearing and evidence package (the "hearing package") on the Tenants by registered mail on August 13, 2010. Section 90 of the Act deems a document delivered in that way to have been received by the recipient 5 days later even if they refuse to pick up the mail. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issues(s) to be Decided

1. Does the Landlord have grounds 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 term tenancy started on May 1, 2010 and expires on April 30, 2011. Rent is \$2,300.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$2,300.00 at the beginning of the tenancy.

The Landlord said he served the Tenants with a One Month Notice to End Tenancy for Cause dated June 18, 2010 on June 18, 2010. The Landlord said the Tenants did not pay rent for July 2010 when it was due and as a result, he also served them on July 11, 2010 with a 10 Day Notice for Unpaid Rent or Utilities by leaving a copy in their mail box

and by posting another copy of the rental unit door. The Landlord said the Tenants have not paid the rent arrears for July and have not paid rent for 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. Under s. 90 of the Act, the Tenants are deemed to have received the Notice to End Tenancy 3 days after it was posted (or put in their mail box), or on July 14, 2010. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than July 19, 2010.

I find that the Tenants have not paid the overdue rent and have not applied for dispute resolution to dispute the 10 Day Notice. 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 2 days after service of it on the Tenants. I also find that the Landlord is entitled to recover rent arrears in the amount of \$4,600.00 as well as the \$50.00 filing fee for this proceeding.

Section 19 of the Act says that a Landlord must not require or accept a security deposit that is greater than $\frac{1}{2}$ of a month's rent. If a Landlord does so, the tenant may deduct the amount from rent owed or recover the overpayment. However, I find that s. 62(3) and s. 72 of the Act give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord 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:	\$4,600.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$4,650.00
Less: Security Deposit:	<u>(\$2,300.00)</u>
Balance owing:	\$2,350.00



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Conclusion

The Tenants' application is dismissed without leave to reapply. An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$2,350.00** 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: August 25, 2010.

Dispute Resolution Officer