



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 Landlords 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 Landlord, P.O., said he served the Tenants in person on September 12, 2010 with the Application and Notice of Hearing. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

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?

Background and Evidence

This month-to-month tenancy started on July 1, 2010. Rent is \$1,800.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$900.00 at the beginning of the tenancy.

The Landlord (P.O.) said the Tenants gave him cheques for August 2010 rent that were drawn on a closed account and as a result they were returned to him unpaid. The Landlord said the Tenants did not pay rent for August and as a result on August 31, 2010 he served them in person with a 10 Day Notice to End Tenancy for Unpaid Rent dated August 31, 2010. The Landlord said the Tenants have not paid rent for September 2010 and only made a partial payment of \$400.00 on October 14, 2010 for October 2010 rent. The Landlord said he does not intend to reinstate the tenancy.

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.



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I find that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent on August 31, 2010. Consequently, the Tenants would have had to pay the overdue amount stated on the Notice or apply to dispute that amount no later than September 7, 2010.

I find that the Tenants have not paid the overdue rent 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 for August 2010, September 2010 and October 1 – 18, 2010 as well as a loss of rental income for October 19 – 31, 2010. I further find that the Landlords are entitled pursuant to s. 72 of the act to recover the \$50.00 filing fee for this proceeding from the Tenants. I order the Landlords 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 Landlords will receive a monetary order for the balance owing as follows:

Rent arrears (August):	\$1,800.00
Rent arrears (September):	\$1,800.00
Rent arrears (Oct. 1-18):	\$1,045.16
Loss rent (Oct. 19 – 31):	\$754.84
Filing fee:	<u>\$50.00</u>
Subtotal:	\$5,450.00
Less: Payment (Oct. 14/10):	(\$400.00)
Security Deposit:	<u>(\$900.00)</u>
BALANCE OWING:	\$4,150.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$4,150.00** 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: October 18, 2010.

Dispute Resolution Officer