



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

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 the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on May 1, 2010 and expires on October 31, 2010. Rent is \$700.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$350.00 at the beginning of the tenancy.

The Parties agree that the Tenants did not pay rent for September when it was due and as a result, on September 3, 2010 the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent dated September 3, 2010 by posting it to the rental unit door. The Tenants paid \$200.00 on September 6, 2010 for which they were issued a receipt stating that the payment was accepted for "use and occupancy only." The Tenants have made no further payments and now have rent arrears for October 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 on September 6, 2010. Consequently, the



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Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than September 13, 2010.

I find that the Tenants have not paid the overdue rent (in full) and have not applied for dispute resolution. 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 on October 22, 2010. I also find that the Landlord is entitled to recover rent arrears in the amount of \$500.00 for September, \$496.77 for October 1 – 22, 2010, a loss of rental income of \$203.23 for October 23 – 31, 2010, late fees of \$25.00 for each of September and October 2010 and \$1.00 representing the balance of a late fee for August 2010. As the Landlord has been successful in this matter, I also find that he is entitled to recover from the Tenants 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:

Rent arrears:	\$996.77
Loss of Rental Income:	\$203.23
Late fees:	\$51.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,301.00
Less: Security Deposit:	(\$350.00)
Accrued Interest:	<u>(\$0.00)</u>
BALANCE OWING:	\$951.00

Conclusion

An Order of Possession effective October 22, 2010 and a monetary order in the amount of **\$951.00** 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: October 20, 2010.

Dispute Resolution Officer