



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPB, MNR, FF

Introduction

This matter dealt with an application by the Landlords for a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding. At the beginning of the hearing the Landlords claimed that the tenancy has ended and as a result, their application for an Order of Possession is dismissed without leave to reapply.

The Landlords said they served the Tenants with their Application and Notice of Hearing by registered mail to their current residence on October 21, 2010 however it was returned to the Landlords unclaimed. Section 90 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later even if they refuse to pick up the mail. 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. Are there rent arrears and if so, how much?

Background and Evidence

This month-to-month tenancy started on December 1, 2008 and ended on September 30, 2010 when the Tenants moved out. Rent was \$1,000.00 per month payable in advance on the first day of each month. The Tenants paid a security deposit of \$500.00 at the beginning of the tenancy, however the Landlords claim that they agreed to apply it to rent owed at another time during the tenancy.

The Landlords said the Tenants had accumulated rent arrears of \$4,900.00 as of September 30, 2010. On September 27, 2010, one of the Tenants (M.W.) entered into a written agreement with the Landlord (H.N.) in which he acknowledged the amount of rent arrears and agreed to pay them by way of monthly instalments of \$150.00 commencing October 1, 2010. The agreement also provided that if the monthly payments were not made, interest of 5% per month would accrue on the unpaid amount. The Landlords said the Tenants have made no payments on the rent arrears.



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Analysis

In the absence of any evidence from the Tenants to the contrary, I find that there are rent arrears of \$4,900.00. Although one of the Tenants (A.W.) did not sign the written agreement to pay the arrears, I find that she is still responsible for them because she is a joint tenant under the tenancy agreement. In particular, RTB Policy Guideline #13 states as follows:

“Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants.”

Although the Landlords sought to recover interest of 5% per month pursuant to the written agreement dated September 27, 2010, I find that there is no authority for charging that amount either in the Parties' tenancy agreement or under the Act and therefore that part of the Landlords' claim is dismissed without leave to reapply.

I find pursuant to s. 72 of the Act that the Landlords are also entitled to recover from the Tenants the \$50.00 filing fee they paid for this proceeding.

Conclusion

The Landlords' application for an Order of Possession is dismissed without leave to reapply. A Monetary Order in the amount of **\$4,950.00** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

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: November 17, 2010.

Dispute Resolution Officer