



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 late payment of rent fees, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on January 27, 2011. 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 compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on June 11, 2010 as a month to month tenancy. Rent is \$850.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$425.00 on June 11, 2010.

The Landlord said that the Tenant did not pay \$450.00 of rent for January, 2011 when it was due and as a result, on January 3, 2011 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated January 3, 2011 on the door of the Tenants' rental unit. The Landlord said the Tenant has now paid the unpaid rent for January in the amount of \$450.00 and the February, 2011 rent in the amount of \$850.00. Both payments were made on February 4, 2011. The Landlord said the receipt for these rent payments indicated the payments were for use and occupancy of the rental unit and that it is the Landlord's intension to seek an Order of Possession.

The Landlord further indicated that the Tenants are living at the rental unit.

The Landlord said he is also seeking to recover a \$25.00 late payment fee for both months of January and February, 2011 and that this fee is written into the Tenancy Agreement addendum, cause #2.

The Landlord is also requested to recover the \$50.00 filing fee for this proceeding.

Analysis

Policy guideline # 11 says if a landlord issues a rent receipt for a late payment of rent and specifies that the payment is for “use and occupancy” then the landlord has showed his intension not to reinstate the tenancy. The Landlord has issued a receipt for use and occupancy to the Tenant therefore, I find that the tenancy has not been reinstated and the Landlord has grounds to apply for an Order of Possession.

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 pay the overdue rent or apply for dispute resolution. If the 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 Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on January 6, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than January 11, 2011.

I find that the Tenants has not paid the overdue rent within the time limits and has 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 48 hours after service of it on the Tenants.

I also find that the Landlord is entitled to recover the late charges of \$25.00 each for January and February, 2011.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Late payment fees(2)	\$ 50.00
Recover filing fee	<u>\$ 50.00</u>
Subtotal:	\$ 100.00
 Balance Owing	 <u>\$ 100.00</u>

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$100.00 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*.

Residential Tenancy Branch