



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF, ET

Introduction

This matter dealt with an application by the Landlords for an Order of Possession, for a Monetary Order for unpaid rent, for compensation for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Landlords abandoned their claim for an Order ending the tenancy early under s. 56 of the Act.

The Landlords said they served the Tenant with the Application and Notice of Hearing (the "hearing package") on January 25, 2011 by registered mail to the rental unit address. Section 90(a) of the Act says that a document delivered in this manner is deemed to be received by the recipient 5 days later. Based on the evidence of the Landlords, I find that the Tenant was served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(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 Tenant's security deposit?

Background and Evidence

This month-to-month tenancy started on April 3, 2008. Rent is \$525.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$262.50 on April 3, 2008.

The Landlords said the Tenant had rent arrears for December 2010 and did not pay January 2011 rent when it was due and as a result on January 6, 2011 the Landlords served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 6, 2011 by posting a copy of it on the rental unit door. The Landlords said the Tenant has not paid the rent arrears set out on the Notice and now has rent arrears for February 2011.

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 will end 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 9, 2011. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than January 14, 2011.

I find that the Tenant has not paid the overdue rent and has 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 Tenant. I also find that the Landlords are entitled to recover rent arrears for December 2010 and January 2011 in the amount of \$1,050.00, unpaid rent for February 1 – 9, 2011 in the pro-rated amount of \$168.75, a loss of rental income for the period February 10 – 14, 2011 in the pro-rated amount of \$93.75, 3 late fees of \$25.00 each (pursuant to a term of the tenancy agreement to that effect) as well as the \$50.00 filing fee for this proceeding.

I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit plus accrued interest in partial payment of the rent arrears. The Landlords will receive a monetary order for the balance owing as follows:

Rent arrears:	\$1,218.75
Loss of rental income:	\$93.75
Late fees:	\$75.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,437.50
Less: Security Deposit:	(\$262.50)
Accrued Interest:	<u>(\$2.94)</u>
BALANCE OWING:	\$1,172.06

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,172.06** have been issued to the Landlords. A copy of the Orders must be served on the Tenant; 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: February 09, 2011.

Residential Tenancy Branch