



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

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 and pet damage deposit in partial payment of those amounts.

The Landlord said her agent served the Tenants in person on February 17, 2011 with the Application and Notice of Hearing (the "hearing package"). Based on the evidence of the Landlord, 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.

Issue(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 and pet damage deposit?

Background and Evidence

This tenancy started approximately 8 months ago. Rent is \$1,450.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$725.00 and a pet deposit of \$725.00 at the beginning of the tenancy.

The Landlord said the Tenants did not pay rent for February 2011 when it was due and as a result, on February 4, 2011 her agent served the Tenants in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 4, 2011. The Landlord said the Tenants have not paid the overdue rent.

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. I find that the Tenants received the 10 Day Notice to End Tenancy on February 4, 2011. Consequently, the Tenants would have had to pay the amount indicated as overdue rent on the Notice or apply to dispute that amount no later than February 9, 2011.

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 Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenants. I also find that the Landlord is entitled to recover from the Tenants rent arrears in the amount of \$1,450.00 as well as 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 and pet damage deposit in payment of the rent arrears. The Landlord will receive a monetary order for the balance owing of \$50.00 (for the filing fee).

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$50.00** 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: February 28, 2011.

Residential Tenancy Branch